

Mayor
Sam Weaver

Council Members

Aaron Brockett
Rachel Friend
Junie Joseph
Mirabai Nagle
Adam Swetlik
Mark Wallach
Bob Yates
Mary Young



Council Chambers
1777 Broadway
Boulder, CO 80302
January 19, 2021
6:00 PM

Interim City Manager
Chris Meschuk

City Attorney
Thomas A. Carr

City Clerk
Elesha Johnson

AGENDA FOR THE REGULAR MEETING OF THE BOULDER CITY COUNCIL

1. Call to Order and Roll Call

A. Update from RTD Director Guissinger on Leadership, Service Cuts and 2021 Outlook **30 min**

B. CU Update regarding COVID and spring semester plans **45 min**

2. Open Comment

3. Consent Agenda

- A. Consideration of a motion to approve the permitted use of certain City of Boulder Open Space properties by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2" subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes within those Open Space properties identified on Attachment B, to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council approved Community Broadband Project**
- B. Consideration of a motion to approve a twenty-year air rights lease for roof overhang, awning, balcony encroachments in the right-of-way at 1900 9th Street (REV2019-00002)**
- C. Consideration of a motion to approve with conditions a Site Review Amendment to the Twenty Ninth Street Shopping Center to adaptively reuse and redesign the existing Macy's Department Store located at 1900 28th Street as an office and retail building. The decision will also set forth how the application meets the site review criteria. This is a continuation of the hearing of Jan. 5, 2021 regarding case no. LUR2018-00075.**

- D. Second reading and consideration of a motion to adopt Ordinance 8441 amending Section 2-3-2 “Arts Commission,” B.R.C. 1981, to implement the voter approved changes presented in Ordinance 8405 to increase the size of the arts commission to seven members; and setting forth related details.
 - 4. Call-Up Check-In
 - 5. Public Hearings
 - 6. Matters from the City Manager
 - A. Maintaining Safe and Welcoming Public Spaces Update **150 min**
 - 7. Matters from the City Attorney
 - 8. Matters from the Mayor and Members of Council
 - A. City Manager Search Update **10 min**
 - 9. Discussion Items
 - 10. Debrief
 - 11. Adjournment
- 5:10 hrs**

Additional Materials

Information Items

- A. Severe Weather Shelter Update
- B. Shared E-scooter Program Boundaries Update
- C. 2020 Transportation Report on Progress
- D. City of Boulder 2020 Multi-Hazard Mitigation Plan Progress Report

Boards and Commissions

- A. Nov. 4, 2020 Environmental Advisory Board Meeting Minutes
- B. October 12, 2020 Transportation Advisory Board Minutes
- C. November 9, 2020 Transportation Advisory Board Minutes

Declarations

- A. Cervical Cancer Awareness Month Declaration

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Send electronic presentations to email address: CityClerkStaff@bouldercolorado.gov no later than 2 p.m. the day of the meeting.



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Update from RTD Director Guissinger on Leadership, Service Cuts and 2021 Outlook

PRIMARY STAFF CONTACT

TBD

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

CU Update regarding COVID and spring semester plans

PRIMARY STAFF CONTACT

TBD

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Consideration of a motion to approve the permitted use of certain City of Boulder Open Space properties by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2" subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes within those Open Space properties identified on Attachment B, to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council approved Community Broadband Project

PRIMARY STAFF CONTACT

Bethany Collins

REQUESTED ACTION OR MOTION LANGUAGE

Consideration of a motion to approve the permitted use of certain City of Boulder Open Space properties by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2" subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes within those Open Space properties identified on Attachment B, to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council approved Community Broadband Project

ATTACHMENTS:

Description

- ▣ **Item 3A - Community Broadband Project**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 19, 2021

AGENDA TITLE: Consideration of a motion to approve the permitted use of certain City of Boulder Open Space lands by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2” subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council-approved Community Broadband Project

PRESENTER/S

Dan Burke, Director, Open Space & Mountain Parks
Francis Duffy, Deputy IT Director, Innovation and Technology
Bethany Collins, Real Estate Supervisor, Open Space & Mountain Parks
Matt Ashley, Property Agent, Open Space & Mountain Parks

EXECUTIVE SUMMARY

This agenda item is the consideration of the permitted use of certain Open Space lands by the City of Boulder Innovation and Technology Department (IT). IT’s use of this Open Space land would be governed by an Interdepartmental Memorandum of Understanding (IDMOU) authorizing IT to bore underground and install two 2” subsurface conduits (co-located in one borehole) and approximately 16 handholes (up to 30” x 48” x 24”) for fiber optic cable on City of Boulder Open Space properties, including Open Space and Mountain Parks (OSMP)-managed ditches and ditch laterals (as listed and generally depicted in **Attachment B**, the “Open Space Properties”), as part of IT’s Council-approved Community Broadband Project (Project). The conduits will be constructed by directional bore under the Open Space Properties with at least 30 inches of ground cover except for locations where handholes with covers will be installed to serve as maintenance access points. The installation of this infrastructure will take place primarily in existing rights of way or easements allowing for such utilities, and also within limited Open Space Properties that do not currently allow for such use. The IDMOU will outline the terms and responsibilities to limit any potential impacts to Open Space Properties and address IT’s ongoing maintenance of the infrastructure and include provisions for reversion or termination of the permitted uses.

The purpose of the council-approved Project is to provide critical telecommunications connectivity to city buildings and infrastructure to better serve the Boulder community, including connectivity to existing city Water Utility infrastructure and emergency communication towers used by OSMP rangers and local law enforcement which are located interior to the Open Space Properties. The Project includes the core fiber backbone and priority laterals. The routes were selected as the alignment alternative that provides the best security and meets the greatest service needs with the least amount of impact to Open Space land. The Project mostly utilizes existing transportation rights-of-way or colocation within utility and ditch easements. The next phase of the Community Broadband Project will then provide additional connections from the citywide backbone including broadband service lines to OSMP's Ranger Cottage and Foothills Nature Center.

City of Boulder [Charter section 176](#) provides that Open Space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land. Title to all Open Space land is held by the City of Boulder. Because a utility easement cannot be conveyed between two city departments, City Council has authorized the transfer of Open Space land to another city department for other uses following the disposal process set forth in Charter section 177.¹ In accordance with [section 175\(a\)](#) and [section 177](#), Open Space Board of Trustees (OSBT) approval and recommendation to City Council is required to dispose of any Open Space land interests.

STAFF RECOMMENDATION

Suggested Motion Language: Staff requests council consideration of this matter and action in the form of the following motion:

Consideration of a motion to approve the permitted use of certain City of Boulder Open Space properties by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2" subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes within those Open Space properties identified on Attachment B, to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council approved Community Broadband Project

OTHER IMPACTS

- Fiscal: The overall value of the transfer of this land interest is considered to be net-neutral due to the benefits to OSMP of having future connectivity and use of the emergency communications framework this infrastructure will provide.
- Staff time: Staff time towards this project is part of the normal 2020 and 2021 work plan for the OSMP Real Estate Services Workgroup.

¹ See, Ordinance 8143, attached as Attachment C, codified in [section 8-8-11](#), B.R.C. 1981.

BOARD AND COMMISSION FEEDBACK

At its Dec. 16, 2020 meeting and public hearing on this topic, Karen Hollweg moved the Open Space Board of Trustees to make a motion to recommend that the Boulder City Council approve the permitted use of certain City of Boulder Open Space properties by the City of Boulder Innovation and Technology Department in compliance with the disposal procedures of Article XII, Section 177, of the City of Boulder Charter to install, operate and maintain two 2” subsurface conduits (co-located in one borehole) with approximately 16 appurtenant handholes within those Open Space properties identified on Attachment B, to be governed by an Interdepartmental Memorandum of Understanding, as part of the City Council approved Community Broadband Project. Curt Brown seconded. This motion passed unanimously 5-0.

PUBLIC FEEDBACK

This item was heard at the Dec. 16, 2020 OSBT public meeting advertised in the *Daily Camera* on Dec. 13, 2020. There were three public commenters, all asked clarifying questions and no opposition was expressed. A Notice of Disposal of Open Space Lands was published in the Daily Camera on December 5 and 6, 2020 pursuant to Section 177 of the Boulder City Charter.

DISPOSAL PROCESS

The disposal process is being utilized for this use because in 2016, with Ordinance 8143, City Council recognized the City of Boulder Charter and the Boulder Revised Code do not expressly address whether a disposal occurs when there is a transfer of Open Space land from the OSMF department to another city department. In such a case, the land remains in city ownership and is not “sold, leased, traded or otherwise conveyed” as contemplated in Charter Section 177. When utility providers outside of the city seek to use Open Space land for utility infrastructure, they do so by following the Charter Section 177 process requesting the city to convey an easement to the utility. The city cannot grant an easement to itself to provide for city utility infrastructure. Ordinance 8143 added a code section providing that any such transfer of the right of another city department to use Open Space land for other than Open Space purposes must be preceded by compliance with the disposal provisions of Charter Section 177. Ordinance 8143 is provided as **Attachment C**.

ANALYSIS

When OSMF considers the disposal of an Open Space land interest, staff considers many factors including, but not limited to, the disposal’s impact (both negative and positive) on the department’s ability to deliver Open Space Charter purposes. OSMF also considers the alternatives and whether the same goals and purposes can be achieved without disposing Open Space land interest. The following is a summary of OSMF’s analysis of the proposed transfer and the alternatives to it.

Surface Impacts

There will be minimal surface impacts to the Open Space Properties which can be mitigated. The conduits are proposed to be installed by directional bore under the Open Space Properties with at least 30 inches of ground cover except for locations where

handholes with covers (up to 30" x 48" x 24") will be installed as maintenance access points. The directional boring will take place from the handhole locations. These temporary bore pits will be restored to OSMP specifications after the handholes are positioned. The handholes may be placed subsurface (sink and cover) if requested. The IDMOU will outline terms and responsibilities to limit any potential impacts to Open Space Properties and addresses IT's ongoing maintenance of the infrastructure. OSMP will otherwise continue to have full use and enjoyment of the Open Space Properties for Open Space purposes.

Benefit to OSMP

This use will benefit the city's Open Space program by providing future connectivity and OSMP rangers' use of the emergency communications framework this infrastructure will service. OSMP will also benefit after the installation of the backbone when broadband service lines to OSMP's Ranger Cottage and Foothills Nature Center can be made.

Alternatives

The alignments of the backbone network were selected to provide the best security and meet the greatest service needs. The Project primarily utilizes existing transportation rights-of-way or colocation within existing utility and ditch easements. Some of the alignments are to serve OSMP facilities and must cross the Open Space Properties to access the facilities. Where this occurs, the conduits align with existing disturbance including trails, and in the case of the "Red Rocks Complex" could be able to take advantage of existing conduits and handholes.

There are no alternatives which would allow service to the priority infrastructure without utilizing portions of Open Space lands. Alternatives with shorter connections through Open Space lands would not follow trails and could impact more sensitive land and resources. The IDMOU will also include provisions for reversion and termination of the use, including termination if OSMP determines the infrastructure operationally conflicts with OSMP's use of the Open Space Properties for Open Space purposes; if IT does not comply with the conditions that protect Open Space values of the property; or if the infrastructure is removed or abandoned.

CONCLUSION

Based on the above alternatives and OSMP's determination that the use of Open Space land by IT to install, operate and maintain the broadband infrastructure will not negatively impact OSMP's ability to deliver Open Space Charter purposes and in fact may enhance staff's ability to protect, steward and manage those purposes, OSMP recommends that council approve this motion.

ATTACHMENTS

- **Attachment A:** Sustainability and Resilience Framework Scorecard
- **Attachment B:** Open Space Property List and Property Map
- **Attachment C:** Ordinance 8143

Attachment A
Sustainability and Resilience Framework Scorecard

Framework Goal	Project Impact <ul style="list-style-type: none"> • Positive • Neutral • Negative 	Description <ul style="list-style-type: none"> • If impact is positive, describe how this effort furthers achievement of this goal • If impact is neutral, put NA. • If impact is negative, describe how potential negative impacts will be mitigated.
SAFE: A welcoming and inclusive community that fosters personal and community safety and ensures that all residents are secure and cared for during emergencies and natural disasters.	Positive	Increased connectivity and communications will benefit community safety by allowing OSMP staff to better communicate safety issues to City residents during emergencies or natural disasters affecting OSMP facilities served by the Project.
HEALTHY & SOCIALLY THRIVING: All Boulder residents enjoy high levels of physical and mental well-being and abundant recreational, cultural, and educational opportunities in an environment where all human rights are respected.	Neutral	NA
LIVABLE: High-performing, safe, well-maintained and attractive buildings and infrastructure that accommodate a diverse set of community needs for working, playing and living.	Positive	OSMP contributes to a livable city by maintaining safe and functional infrastructure to facilitate the use of Open Space by City residents. The Project supports the city's livability by helping to maintain high-performing, safe, and well-maintained OSMP infrastructure to facilitate such access.
ACCESSIBLE & CONNECTED: A safe, accessible and sustainable multi-modal transportation system that connects people with each other and where they want to go. Innovation, inclusivity and open access to information fosters connectivity and promotes community engagement.	Positive	Increased connectivity at OSMP facilities served by the Project will improve OSMP's ability to foster connectivity and promote community engagement.
ENVIRONMENTALLY SUSTAINABLE: A sustainable, thriving and equitable community that benefits from and supports clean energy; preserves and responsibly uses the earth's resources; and cares for ecosystems.	Positive	OSMP is a significant community-supported program that is recognized worldwide as a leader in preservation of Open Space lands contributing to the environmental sustainability goal of the City Council. Increased connectivity helps OSMP staff communicate and use City resources more efficiently, which helps preserve, protect and enhance the values of the city's Open Space system.
RESPONSIBLY GOVERNED: A local	Neutral	NA

government that provides an excellent customer experience, responsibly manages the city's assets and makes data-driven decisions informed by community engagement.		
ECONOMICALLY VITAL: All residents and businesses can access and benefit from a healthy and sustainable economy that is innovative, diverse and collaborative.	Positive	OSMP contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. Increased connectivity will allow staff at OSMP facilities to provide improved service to City residents, which supports the city's quality of life which attracts visitors and helps businesses recruit and retain quality employees.

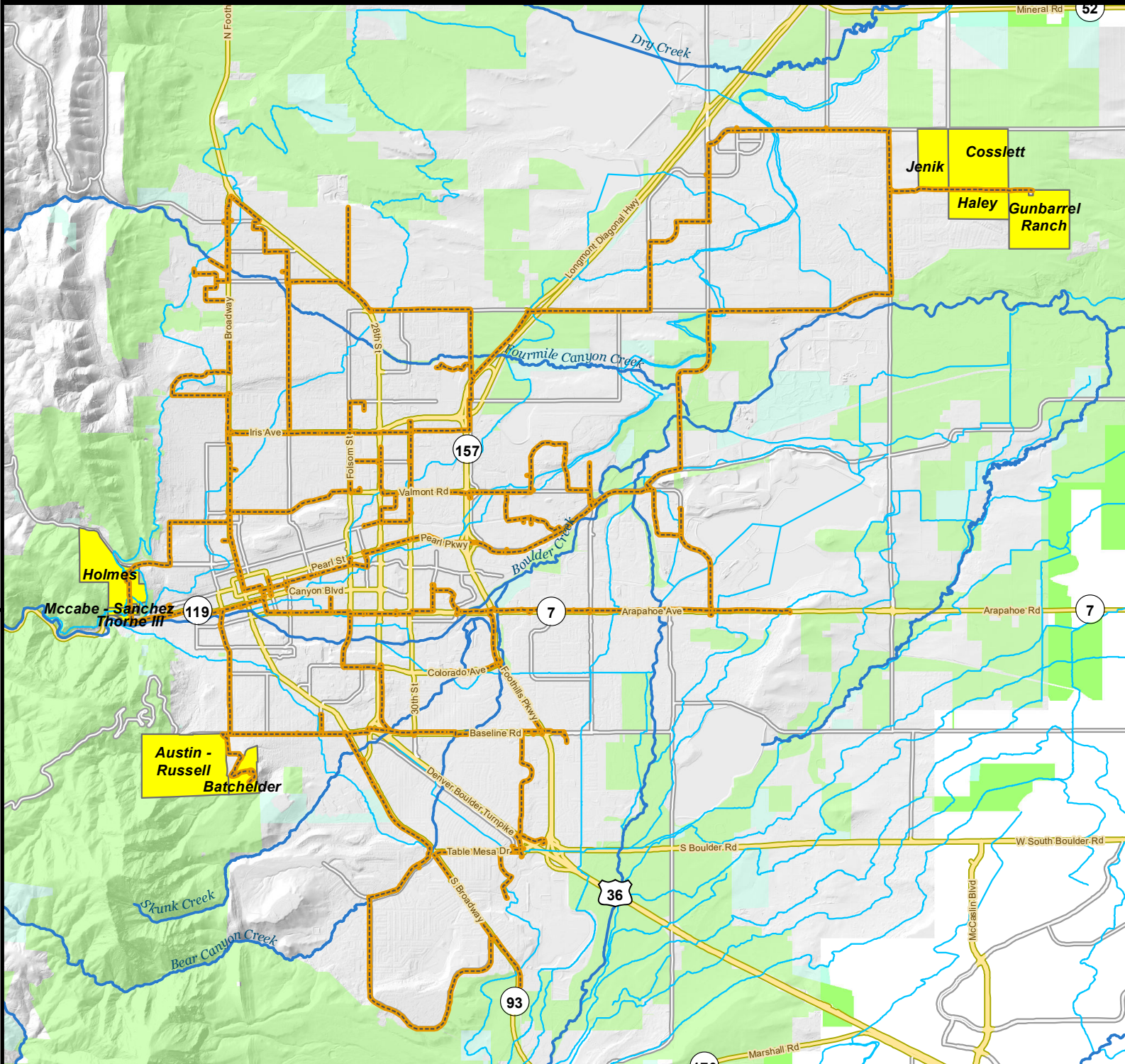
Attachment B
Open Space Property List and Property Map

Open Space Property List:

1. Cosslett property, also known as Boulder County Parcel No. 146507000002.
2. Jenik property, also known as Boulder County Parcel No. 146312100001.
3. Haley property, also known as Boulder County Parcel No. 146507300001.
4. Gunbarrel Ranch property, also known as Boulder County Parcel No. 146507000004.
5. Thorne III property, also known as Boulder County Parcel No. 146136200041.
6. McCabe-Sanchez, also known as Boulder County Parcel No. 146125300035.
7. Holmes property, also known as Boulder County Parcel No. 146125300035.
8. Batchelder property, also known as Boulder County Parcel No. 157901100001.
9. Austin Russel property, also known as Boulder County Parcel No. 157901100001.

Also, including those Open Space Properties where the Project is located within existing rights of way or easements allowing for such utilities shown on the map.

ATTACHMENT B: IT Broadband Project Open Space Property Map



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The City of Boulder has provided the data as a public service and offers no guarantees or warranties, expressed or implied, as to the accuracy and/or completeness of the information contained herein. The City of Boulder makes no warranties about the dataset and disclaims liability for all uses of the datasets, to the fullest extent permitted by applicable law.

Proposed Fiber Cable Route

OSMP Land Interests Where Broadband Route Is Not In ROW

OSMP Land - Simplified Interests

OSMP Ownership

OSMP Easements

0 1 2 3 Miles

ORDINANCE 8143

AN ORDINANCE AMENDING TITLE 8 "PARKS, OPEN SPACES, STREETS, AND PUBLIC WAYS" BY AMENDING THE TITLE TO CHAPTER 8-3 BY ADDING "OPEN SPACE AND MOUNTAIN PARKS" BY AMENDING THE TITLE TO CHAPTER 8-8, BY ELIMINATING THE REFERENCE TO THE OPEN SPACE VISITOR MASTER PLAN, BY ADDING A NEW SECTION 8-8-11 "TRANSFER OF OPEN SPACE LAND" REQUIRING COMPLIANCE WITH SECTION 177 "DISPOSAL OF OPEN SPACE LAND" PRIOR TO A TRANSFER OF OPEN SPACE LAND TO ANOTHER CITY DEPARTMENT AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Legislative Intent

The intent of this ordinance is to clarify the respective authority of the Open Space Board of Trustees and the Boulder City Council. Under Section 177 of the Boulder Home Rule Charter, the Open Space Board of Trustees must approve any sale, lease, trade or other conveyance of open space land. The Charter does not expressly address whether a disposal occurs when there is a transfer of open space land from the Open Space and Mountain Parks department to another city department, without changing the legal title to the land, which is held by the city of Boulder. Although not expressly stated, it is the city council's interpretation that the Charter intent is that open space lands be used only for an open space purpose. This ordinance is intended to clarify that any such transfer to another city department will for the purpose of the Charter be treated as a disposal and may only be completed after compliance with the disposition provisions of Charter Section 177.

Section 2. The title to Chapter 8-3 is amended to read as follows:

Chapter 3 - Parks and Recreation – Open Space and Mountain Parks

Section 3. The title to Chapter 8-8 is amended to read as follows:

Chapter 8 – Management of Open Space Lands and Mountain Parks Visitor Master Plan Implementation

Section 4. Section 8-8-1 is amended to read as follows:

8-8-1. - Purpose.

The purpose of this chapter is to protect the public health, safety and general welfare by establishing procedures and requirements necessary to implement the Charter and any

8-8-11. – Transfer of Open Space Lands.

Section 6. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

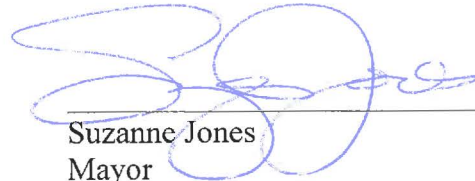
Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 20th day of September, 2016.

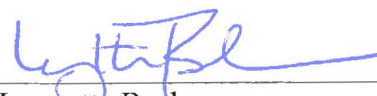
Attest:


Lynnette Beck
City Clerk

1 READ ON SECOND READING, PASSED, ADOPTED, this 15th day of November,
2 2016.

3
4
5 
Suzanne Jones
Mayor

6 Attest:

7 
8 Lynnette Beck
9 City Clerk



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Consideration of a motion to approve a twenty-year air rights lease for roof overhang, awning, balcony encroachments in the right-of-way at 1900 9th Street (REV2019-00002)

PRIMARY STAFF CONTACT

Sloane Walbert, Senior Planner

ATTACHMENTS:

Description

- ▣ **Item 3B - 1900 9th Street ROW - FINAL**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 19, 2021

AGENDA TITLE: Consideration of a motion to approve a twenty-year air rights lease for roof overhang, awning, and balcony encroachments in the right-of-way at 1900 9th Street (REV2019-00002).

Applicant: Baker Felix, Tebo Properties

Property Owner: Stephen D. Tebo d/b/a Tebo Properties

PRESENTER/S

Chris Meschuk, Interim City Manager

Jacob Lindsey, Director of Planning & Development Services

Charles Ferro, Development Review Manager, Planning

Edward Stafford, Development Review Manager, Public Works

Sloane Walbert, Senior Planner

EXECUTIVE SUMMARY

The purpose of this item is for City Council to authorize a twenty-year right-of-way lease for 104 square feet of property directly beneath second level decks, air rights for first level awnings, and air rights for third level roof overhangs located at 1900 9th Street. Approval of this item would authorize the City Manager to execute the necessary documents to accomplish this transaction. The proposed Right-of-Way Lease is attached (see **Attachment A**). Pursuant to Section 2-2-8, "*Conveyance of City Real Property Interests*," B.R.C. 1981, City Council approval is required for lease terms that exceed three years.

The existing retail/office building located at 1900 9th Street was constructed in 1999 per approved Site Review #SI-95-17. The building was approved as three stories and 41'-6" in height. As part of the conditions of approval, the applicant was required to receive an air rights lease from the city for various encroachments into the 9th Street and Walnut Street rights-of-way. The awnings, decks, and generous roof overhangs are integrated into the building design and would not be easily removed from the project. A 20-year long term lease was approved and issued by the city in 1999. This application would extend the lease for an additional 20 years.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the City Manager to approve and execute a twenty-year right-of-way lease for roof overhang, awning, and balcony encroachments located at 1900 9th Street.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: No direct economic impact is anticipated.
- Environmental: None anticipated.
- Social: None anticipated.

OTHER IMPACTS

- Fiscal: Annual rental rate of \$538.22 per year. The lease amount is based on the footprint of second level decks that crosses the property line and are usable by tenants of the development. Per Section 4-20-20(h), “*Revocable Right of Way Permit/Lease Application Fee*,” B.R.C. 1981, applications for encroachments not covered by the fee section of the code will be reviewed and assessed a fee designed to recover city costs associated with the review and inspection. A rate of \$3.32 per square foot was set by the city’s real estate group when the encroachments were approved in 1999 based on the nature of the encroachments. This rate has been adjusted by Consumer Price Index (CPI) to \$5.16 per square foot for the proposed lease. At the time of initial approval, the City used the value of one-third the commercial lease rate to determine the value of the deck encroachments. The rationale was that outside space like decks could rationally be utilized for 1/3 of the year. Portions of the second level decks extend over the property line on the south and west building elevations, totaling 104 square feet. The awning and roof overhang encroachments are subject to an annual rental rate of \$1 per year. Encroachments that involve air space only (no usable space) have historically been charged an annual \$1 fee.
- Staff time: The applicant has paid the required application fee to cover the staff review time of the proposed lease.

BACKGROUND / PROCESS

Any permit or lease term of three years or greater, up to twenty years, must be approved by the City Council. The City Manager is authorized to permit encroachments within the public right-of-way or a public easement for a period of three years or less. See Section 2-2-8, “*Conveyance of City Real Property Interest*,” B.R.C. 1981, and the City Charter Section 111, “*Terms not longer than twenty years – compensation*.” The building encroachments at 1900 9th Street are integrated into the building design approved per a

discretionary site review and permanent in nature. Thus, these areas can be leased for a period exceeding three years only upon approval of the City Council. Staff has determined that there will be no public need for the leased areas for the duration of the lease term.

The 7,700 square foot site is located at the northeast corner of 9th Street and Walnut Street, as shown below in **Figure 1**. The site is zoned Downtown - 5 (DT-5) and is within the Non-Historic Area of Downtown as defined by the 2016 Downtown Design Guidelines. Immediately south of the site across Walnut Street is the St. Julien Hotel. The West Pearl District is located one block north, which contains a variety of commercial uses.



Figure 1: Vicinity Map

The existing retail/office building on the project site was constructed in 1999 per approved Site Review #SI-95-17. The building was approved as three stories and 41'-6" in height. As part of the conditions of approval, the applicant was required to receive an air rights lease from the city for roof overhangs, awnings, and deck encroachments into the 9th Street and Walnut Street rights-of-way. A 20-year long term lease was approved and issued by the city in 1999. The subject application would extend the lease for an additional 20 years.

At time of approval, it was argued by staff that the architectural character of the project was accentuated by specific building elements intended to give the project a pedestrian scale. These elements included traditional storefront elements, overhangs, awnings, and recessed entries. The articulation of these architectural elements created right-of-way encroachments on both street frontages. The decks, fabric awnings, and generous roof

overhangs are integrated into the building design and would not be easily removed from the project.



Figure 2: Building encroachments as seen from 9th Street looking northeast (Source: Google Earth).



Figure 3: Building encroachments as seen from Walnut Street looking northwest (Source: Google Earth).

If a right-of-way lease is denied, the property owner must resolve the area of encroachment. The encroachment may require removal at the owner's expense or purchase of enough right-of-way to accommodate the encroachment.

ANALYSIS:

Since the encroachments are permanent in nature, a long-term lease may be approved, if the following criteria are met, pursuant to Section 8-6-6(f), B.R.C. 1981:

1. *The encroachment does not constitute a traffic or other hazard.*

The awnings, decks, and roof overhangs do not encroach onto the sidewalks or roadway and do not create traffic hazards.

2. *The encroachment does not destroy or impair the public's use of the land for its intended purposes or serves a public purpose that cannot otherwise be accomplished without such minor impairment.*

The existing overhangs and balconies are located on the second and third levels and do not impair the public use of 9th Street or Walnut Street. The awnings are located at the first level, but adequate vertical clearance is provided such that the awnings do not impact the public's use of the right-of-way. The building improvements create visual interest, which enhance the pedestrian experience along Walnut and 9th streets.

3. *Encroachment on a sidewalk in commercial areas maintains a minimum clearance of eight feet vertically and horizontally of unobstructed pedestrian way. The requirements of this paragraph may be modified by the City Manager if reasonable passage is provided on the sidewalk and the safety of pedestrians, bicyclists and motorists is not impaired.*

Adequate space exists vertically and horizontally to safely accommodate pedestrian and vehicular traffic.

4. *A longer-term use of the public property for the specific term approved will not be contrary to the public interest and ultimate use of the public right-of-way or public easement; and there will be no public need for the leased area during the lease period.*

A twenty-year right-of-way lease to allow for the encroachments is not contrary to the public interest. There is no contemplated public need for the leased ground or air space on 9th Street or Walnut Street during the term of the lease.

5. *Adequate compensation is provided to the city throughout the lease term.*

A lease rate of \$538.22 per year has been established by the city. The lease amount is based on the footprint of second level decks that crosses the property line and are usable by tenants of the development. A lease rate of \$3.32 per square foot was set by the city's real estate group when the encroachments were approved in 1999, based on the nature of the encroachments. This lease rate has been adjusted by Consumer Price Index (CPI) to \$5.16 per square foot for the proposed lease. At the time of initial approval, the city used the value of one-third the commercial lease rate to determine the value of the deck encroachments. The rationale was that outside space like decks could rationally be utilized for 1/3 of the year.

The awning and overhang encroachments are subject to an annual rental rate of \$1 per year. Encroachments that involve air space only (no usable space) have historically

been charged an annual \$1 fee. The intent of a revocable lease for air space, versus ground space, is to cover any liability the city may have. Allowing use of the air space does not prohibit the city's use of the ground space below.

PUBLIC FEEDBACK

This item is being heard as part of the consent agenda and has been advertised in the Daily Camera.

MATRIX OF OPTIONS

City Council may:

1. Approve the 20-year lease as proposed.
2. Deny the 20-year lease but direct the City Manager to approve a three-year lease instead. The applicant would be required to renew the lease every three years as directed by the city.
3. Deny both the long and short-term leases and direct the applicant to purchase the air rights and/or right-of-way from the city.
4. Deny both the long and short-term leases and agree to a lot line adjustment between the City right-of-way and applicant's property for the areas of the encroachments.
5. Deny both the long and short-term leases and require that the building improvements be demolished.

ATTACHMENT

Attachment A: Proposed 20-year Right-of-Way Lease (REV-00993760)

**CITY OF BOULDER
RIGHT-OF-WAY LEASE REV-00993760**

THIS Lease ("Lease") is entered into this _____ day of _____, 2020, by and between the City of Boulder, a Colorado home rule City, hereinafter called "Lessor," and Stephen D. Tebo d/b/a Tebo Properties, herein called "Lessee."

RECITALS

A. Stephen D. Tebo d/b/a Tebo Properties is the owner of the property and improvements located at 1900 9th Street, and more particularly described in Exhibit C attached hereto and incorporated herein; and

B. The Lessor is the owner of the public right-of-way adjacent to the property located at 1900 9th Street; and

C. The first and third level overhangs and second level decks ("Encroachments" are located at 1900 9th Street, portions of which encroach into the aforementioned public right-of-way of the City of Boulder; and

D. On _____, 20____, the City Council approved this Lease for a period to exceed three years pursuant to Section 2-2-8, B.R.C. 1981; and

E. The Lessor had determined that the said public right-of-way will not be required for a public purpose during the term of this Lease and that the use of the surface of said public right-of-way by the public or the Lessor for the benefit of the public will not be impaired.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Premises Leased. The Lessor hereby leases, demises, and sets off to the Lessee the following portions of air space over Lessor's right-of-way for the Encroachments ("Leased Premises"):

See Exhibit A attached hereto and incorporated herein by reference.

2. Lease Term: This lease term shall be for the lesser of twenty (20) years or the life of the aforementioned Encroachments, whichever first occurs, said term commencing at noon on _____. During the Lease Term, Lessee shall have the right to repair said Encroachments.
3. Rent. Lessee hereby agrees to pay as and for an **annual** rent for use of the above described Encroachments, the fee in the amount of \$538.22 (104.375 sf of 2nd level decks x \$5.15656036 psf) which sum shall be escalated annually by increase in the "Consumer Price Index" for the Denver/Boulder Metropolitan

area. The annual rent amount is due and payable, without requirement of notice or billing by Lessor, on or before the annual anniversary of the Date of Issuance as set forth below.

Please remit payment to City of Boulder, Planning & Development Services, 1739 Broadway, 3rd Floor, Post Office Box 791, Boulder, CO 80306-0791.

4. Computation of Time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday.
5. Maintenance. The Lessee agrees to construct and maintain the Encroachments in said public right-of-way with due caution and regard for the Lessor's and the public's right of use and access to the land adjoining 1900 9th.

The City shall not be responsible for any maintenance in the Leased Premises. However, the City reserves the right to access the Leased Premises to maintain any and all City utilities and other public improvements located in said public right-of-way. It is expressly understood that interruptions of utility services to Lessee's property or damage to Lessee's property by act of God or sabotage are beyond the control of the City and do not constitute breach of Lease agreement. The City agrees to endeavor to correct manifestations of the foregoing and to return the Leased Premises to normal operation as soon as possible. Loss or damage to property of any kind in the Leased Premises or loss suffered by the business or occupation by Lessee as a result of the foregoing events shall be at Lessee's risk.

6. Removal and Restoration. Lessee agrees, upon removal of any private improvements, to restore public improvements in the public right-of-way to their original condition. If the Lessor determines that all or portions of the public improvements have been damaged beyond reasonable repair, Lessee agrees to replace such improvements in accordance with standards for construction in the public right-of-way prescribed by the most current City of Boulder Design and Construction Standards and the Boulder Revised Code, 1981. Lessee agrees to notify the City within five (5) days of removal of any such private improvements so the Lessor may inspect the public right-of-way.
7. Indemnification. The Lessee agrees to indemnify and hold harmless the City from and against all claims, suits, losses, and expenses in any manner resulting from, arising out of, or connected with the construction, use, operation or maintenance of the Leased Premises.
8. Insurance. Prior to the execution of the Lease, the Lessee shall submit to the Lessor all insurance policies or Certificates of Insurance as evidence of compliance with the provisions of this paragraph and subject to approval by the

Lessor. Lessee shall, at Lessee's sole expense, procure and maintain or cause to be procured and maintained with insurers approved by Lessor a general or personal liability insurance policy with minimum limits of \$1 million per occurrence and a \$2 million aggregate. Subrogation shall be waived in favor of the Lessor. This policy shall name the City of Boulder and its elected officials and employees as additional insured. The Lessee agrees that the above stated policy limits shall be raised to meet any additional coverage necessitated by amendments to the Colorado Governmental Immunity Act that may expose Lessor to judgments greater than the insurance coverage required herein.

This policy shall be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by the City. This policy shall be maintained in full force and effect for the duration of the Lease. Lessee, or Lessee's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance policy within seven (7) days of receipt of insurers' notification to that effect. Lessee shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage and shall provide Lessor with an updated Certificate of Insurance annually.

9. Renewal. This Lease may be renewed for additional periods of time not greater than two (2) years, 364 days upon the mutual consent of the Lessee and Lessor. Any term greater than two (2) years, 364 days but less than twenty (20) years in length requires the mutual consent of the Lessee and Lessor after appropriate action by the Boulder City Council.
10. Warranty of Authority. The Lessee warrants and agrees that Lessee has the good right, full power and lawful authority to execute this Lease.
11. Binding Provision. The provisions of the Lease shall be binding upon the parties hereto and upon their respective heirs, successors, and assigns.
12. Revocation. The City may revoke, without cause, this Lease at any time upon ten (10) days' written notice to the Lessee pursuant to Section 8-6-7, "Revocation of Revocable Permit and Order to Remove Encroachment," B.R.C. 1981, and the provision and remedies of Section 8-6-7, B.R.C., 1981 shall apply to the removal of the Encroachments.
13. Compliance with Laws. Lessee agrees to comply with all applicable laws, rules, regulations, and ordinances in conducting its installation, operation, maintenance, and removal of the Encroachments.
14. Assignment. Prior to any assignment of this Lease, the Lessee will request the prior approval of the city manager. The purpose of the city manager's approval will be to ensure that the requirements of this Lease continue to be in compliance with this Lease.

DATE OF ISSUANCE: _____

DATE OF EXPIRATION: _____

IN WITNESS WHEREOF, we have set our hands on this date above mentioned.

LESSEE/BUILDING OWNER:

Signature: 
Printed Name: Stephen D. Tebo,
d/b/a Tebo Properties

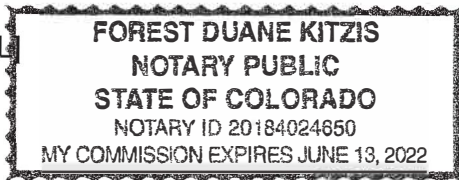
State of Colorado)
) ss.
County of Boulder)

The foregoing instrument was acknowledged before me this 8 day of
December, 2020 by Stephen D. Tebo d/b/a Tebo Properties.

Witness my Hand and Seal.

My Commission Expires: 6/13/2022

[SEAL]




Notary Public


CITY OF BOULDER

By: _____
Chris Meshuk, Interim City Manager

Attest:

City Clerk

Approved As To Form:



City Attorney's Office

Date: 1/12/2021

EXHIBITS

Exhibit A	Map of Leased Premises
Exhibit B	Certificate of Insurance
Exhibit C	Legal Description

Exhibit A

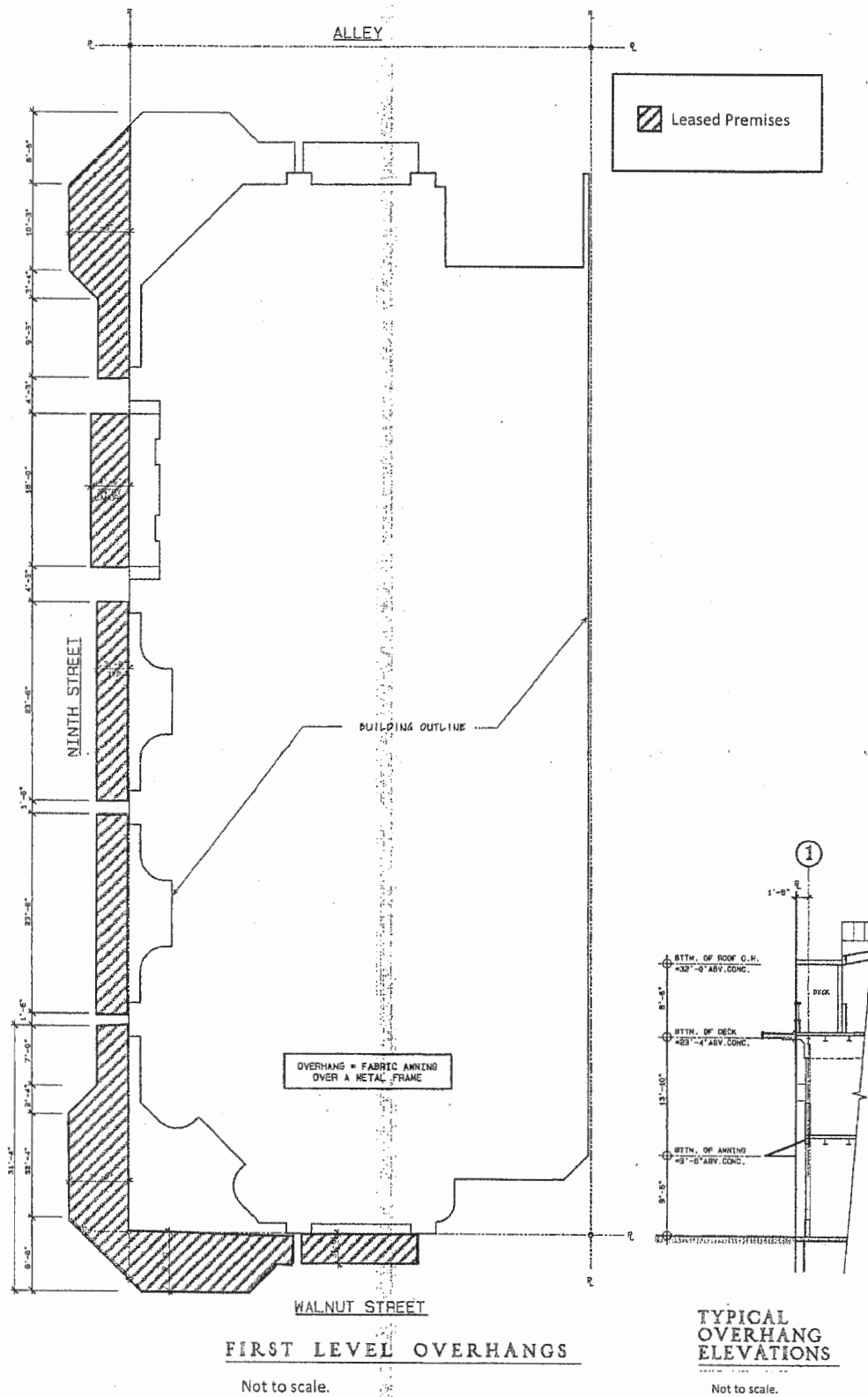
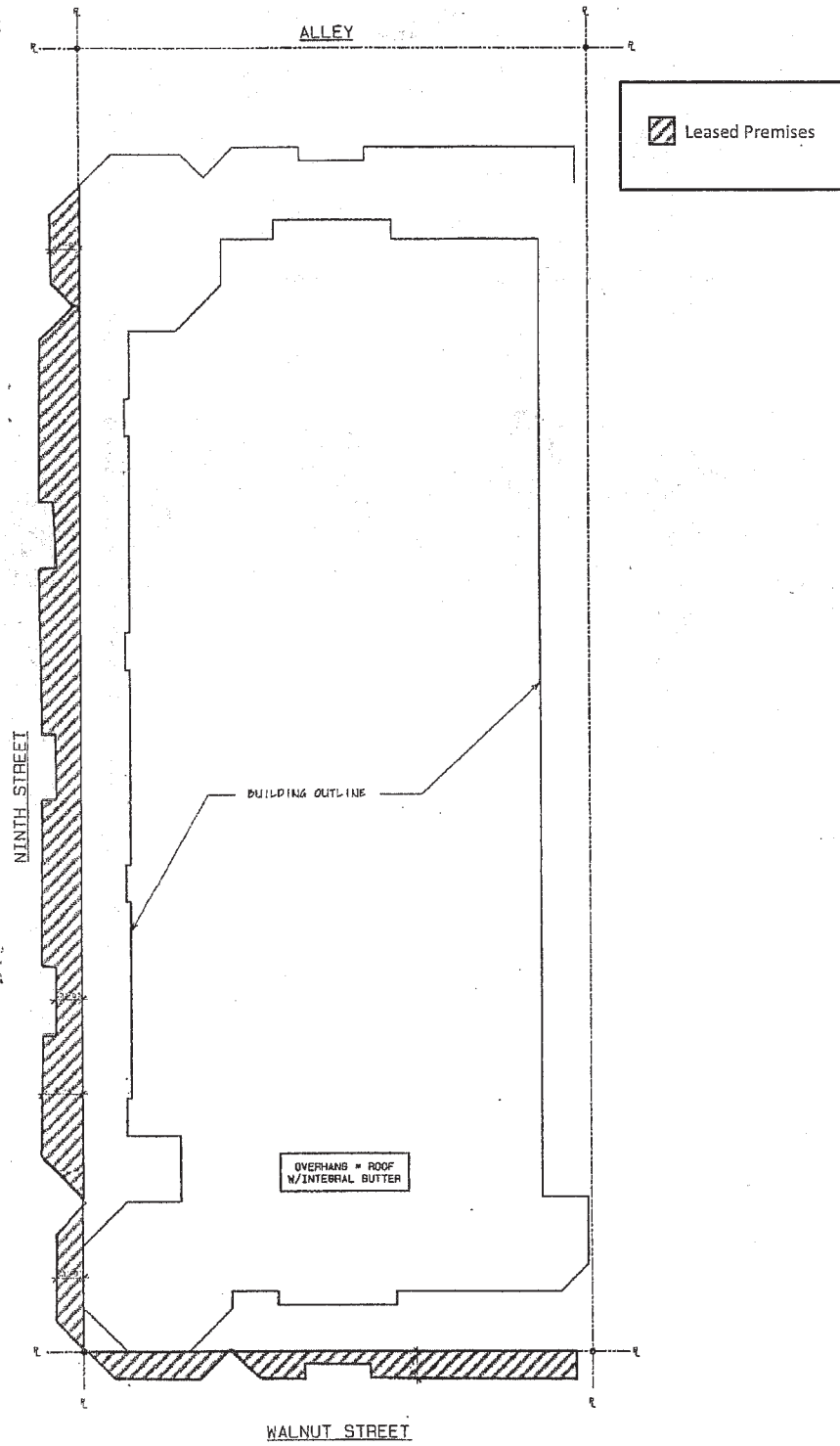


Exhibit A



THIRD LEVEL OVERHANGS

Not to scale.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/1/2021

11/24/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 8110 E Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	CONTACT NAME: PHONE (A/C, No. Ext): E-MAIL ADDRESS:		FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED 1479817 Tebo Development CO 3111 28th St Boulder, CO 80301	INSURER A: Zurich American Insurance Company		16535
	INSURER B: Travelers Property Casualty Co of America		25674
	INSURER C: Federal Insurance Company		20281
	INSURER D: Pinnacol Assurance Company		41190
	INSURER E:		
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** 17162129 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR \$10,000 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	GLA057921000	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	GLA057921000	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ \$0	Y	Y	ZUP51N3229420NF	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	Y N/A	4096544	10/1/2020	10/1/2021	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Excess Liability	Y	Y	93651494	7/1/2020	7/1/2021	15M xs 10M Each Occurrence 15M xs 10M Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: 1900 9th St. Boulder, CO 80302. GL Additional Insured applies as required by written contract. Waiver of Subrogation applies as per written contract.
 Additional Insureds: The City of Boulder, its elected officials and employees

CERTIFICATE HOLDER

CANCELLATION

17162129
 City of Boulder
 PO Box 0791
 Boulder CO 80306

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

EXHIBIT C

Legal Description of 1900 9th Street

Lot 7 and the West 5 feet of Lot 8,
Block 64,
West Boulder,
County of Boulder,
State of Colorado.



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Consideration of a motion to approve with conditions a Site Review Amendment to the Twenty Ninth Street Shopping Center to adaptively reuse and redesign the existing Macy's Department Store located at 1900 28th Street as an office and retail building. The decision will also set forth how the application meets the site review criteria. This is a continuation of the hearing of Jan. 5, 2021 regarding case no. LUR2018-00075.

PRIMARY STAFF CONTACT

Elaine McLaughlin, Senior Planner

BRIEF HISTORY OF ITEM

This motion is based on the previous approval by City Council on Jan 5, 2021 in which council approved a motion to incorporate conditions of approval for the Site Review, providing for covenants for the two voluntary offers from the applicant: first, that there be an addition that the affordable commercial agreement be based on a similar structure referred to as, "the Pollard Agreement" at 80 percent...., and that the Affordable Housing Linkage Fee be \$4.8 million, with the \$1.8 million plus the \$3 million waiver.

ATTACHMENTS:

Description

- ▣ **Item 3C - 1900 28th Street (Macy's) Site Review Amendment - FINAL**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 19, 2021

AGENDA TITLE: Consideration of a motion to approve with conditions a Site Review Amendment to the Twenty Ninth Street Shopping Center to adaptively reuse and redesign the existing Macy's Department Store located at 1900 28th Street as an office and retail building. The decision will also set forth how the application meets the site review criteria. This is a continuation of the hearing of Jan. 5, 2021 regarding case no. LUR2018-00075.

PRESENTER/S

Chris Meschuk, Interim City Manager

Tom Carr, City Attorney

Jacob Lindsey, Director of Planning & Development Services

Charles Ferro, Development Review Manager / Interim Comprehensive Planning Manager

Elaine McLaughlin, Senior Planner

EXECUTIVE SUMMARY

The purpose of this item is for City Council to finally approve Site Review application case no. LUR2018-00075 incorporating the staff memorandum including the Site Review criteria analysis as findings of fact and subject to the conditions of approval provided in this staff memorandum for the Jan. 19, 2021 Council meeting.

On Jan. 5, 2021, City Council held a public hearing and discussed a Site Review Amendment to the Twenty Ninth Street Shopping Center which proposes to adaptively reuse and redesign the existing Macy's Department Store building. At that time, council passed a motion to approve the Site Review application in a decision to be issued by Council within 30 days. The decision is to incorporate conditions of approval providing for the two voluntary offers made by the applicant:

- (1) A covenant providing for voluntary payment of \$3,022,400 to the City's affordable housing fund, an amount generally equivalent to a linkage fee credit available under the Boulder Revised Code, and

- (2) A covenant requiring the proposed 7,500 square foot retail space to be a permanently affordable retail space rented at a maximum of 80% of the average rent paid for comparable retail space in the City.

The new conditions are presented in this memo along with draft covenants and the previously proposed conditions.

STAFF RECOMMENDATION

Staff requests council consideration of this matter and action in the form of the following motion:

Suggested Motion Language:

Motion for final approval of Site Review application case no. LUR2018-00075 incorporating the staff memoranda and attached Site Review criteria analysis as findings of fact and subject to the conditions of approval provided in the staff memorandum for the January 19, 2021.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – N/A
- Environmental – N/A
- Social – N/A

OTHER IMPACTS

- Fiscal – no fiscal impacts are anticipated.
- Staff time – the Site Review application was completed under standard staff review time.

BOARD AND COMMISSION FEEDBACK

Refer to the Jan 5, 2021 Staff Memorandum found [here](#).

BACKGROUND

On Jan. 5, 2021, the City Council held a public hearing, reviewed the Site Review and moved to approve the application in a decision to be issued within 30 days with additional conditions through the following motion:

On a motion by **R. Friend**, seconded by **A. Brockett**, the City Council voted 8-1 (**M. Young** opposed) to approve the application in a decision to be issued by council within 30 days. The decision to incorporate conditions providing for covenants for the two voluntary offers: the one on the linkage fee and the one on affordable commercial to be incorporated into the final decision. With the addition that the affordable commercial agreement be based on the Pollard Agreement at 80 percent, and that the linkage fee be \$4.8, with the \$1.8 million plus the \$3 million waiver.

STAFF FINDINGS AND RECOMMENDATION

The proposed project and staff analysis of the project can be found in the the staff memorandum and attached Site Review criteria analysis prepared for the January 5, 2021 City Council meeting and can be accessed [here](#). Staff finds that the application meets the Site Review criteria found in Land Use Code section 9-2-14(h), B.R.C., 1981 and is consistent with the applicable [Twenty Ninth Street](#) and the [BVRC](#) Design Guidelines, subject to the following conditions of approval. Therefore, staff requests City Council consideration of this matter and action in the form of the following motion:

Motion to finally approve Site Review application case no. LUR2018-00075 incorporating the staff memoranda and attached Site Review criteria analysis as findings of fact and subject to the conditions of approval provided in the staff memorandum for the January 19, 2021 Council meeting.

CONDITIONS OF APPROVAL

1. The Applicant shall ensure that the **development shall be in compliance with all plans prepared by the Applicant** on January 7, 2020, the Applicant's written statement, including the cover letter dated November 11, 2019 and the Lookbook dated January 7, 2020, and the Transportation Demand Management (TDM) Plan dated October 29, 2019, all on file in the City of Boulder Planning Department, except to the extent that the development may be modified by the conditions of this approval.
2. The Applicant shall **comply with all previous conditions** contained in any previous approvals, except to the extent that any previous conditions may be modified by this approval, including, but not limited to, the following:
 - Development Agreement recorded in the records of the Boulder County Clerk and Recorder at Reception No. 2660078.
3. Prior to a building permit application, the Applicant shall submit, and obtain City Manager approval of, a Technical Document Review application for the following items:
 - a. **Final architectural plans**, including material samples and colors, to ensure compliance with the intent of this approval and compatibility with the surrounding area. The architectural intent shown on the plans prepared by the Applicant on January 7, 2020 is acceptable. Planning staff will review plans to ensure that the architectural intent is performed.
 - b. A **final site plan** that includes detailed floor plans and section drawings.
 - c. A **final utility plan** meeting the City of Boulder Design and Construction Standards.
 - d. A **final storm water report and plan** meeting the City of Boulder Design and Construction Standards.

- e. A **detailed landscape plan**, including size, quantity, and type of plants existing and proposed; type and quality of non-living landscaping materials; any site grading proposed; and any irrigation system proposed, to ensure compliance with this approval and the City's landscaping requirements. Removal of trees must receive prior approval of the Planning Department. Removal of any tree in City right of way must also receive prior approval of the City Forester.
 - f. A **detailed outdoor lighting plan** showing location, size, and intensity of illumination units, indicating compliance with section 9-9-16, B.R.C.1981.
 - g. A **detailed shadow analysis** to ensure compliance with the City's solar access requirements of section 9-9-17, B.R.C. 1981.
4. Prior to issuance of a building permit, the Applicant shall submit a **financial guarantee**, in a form acceptable to the Director of Public Works, in an amount equal to the cost of providing eco-passes to the employees of the development for three years after the issuance of a certificate of occupancy.
5. The Applicant proposed to further the project's consistency with the site review criteria through a voluntary payment to the City's affordable housing funds in the amount of \$3,022,400 to improve the jobs-housing balance in the City. The Applicant agreed that this proposal is voluntary and to voluntarily make it a condition of this approval. Per this proposal, within 30 days of this approval, the Applicant and City shall execute one or more agreements or covenants that shall run with the land and be recorded in the office of the County Clerk and Recorder of Boulder County, generally in the form attached to the January 19, 2020 staff memorandum and subject to City Manager approval, providing for:
- a. A voluntary payment to the City's affordable housing fund in the amount of \$3,022,400, (which is approximately the credit available for the existing retail floor area on the property under Section 8-9-3, B.R.C. 1981.)

The Applicant shall make the voluntary payment prior to final building inspection. This payment shall not affect any fees, taxes or charges due under the Boulder Revised Code.

6. The Applicant proposed to further the project's consistency with the site review criteria through operation of the proposed retail space as a permanently affordable retail space. The Applicant agreed that this proposal is voluntary and to voluntarily make it a condition of this approval. Per this proposal, within 30 days of this approval, the Applicant and City shall execute one or more agreements or covenants that shall run with the land and be recorded in the office of the County Clerk and Recorder of Boulder County, generally in the form attached to the January 19, 2020 staff memorandum and subject to City Manager approval, providing that:

- a. The proposed retail space will be rented at rate up to a maximum of 80 percent of the average rent paid for a comparable retail space within the City of Boulder. The rent restriction shall be permanent. The permanently affordable retail space shall be at least 7500 square feet in floor area.

The retail space shall be operated and maintained consistent with this condition and the required covenants or agreements.

ANALYSIS

At the January 5, 2021 City Council hearing regarding case LUR2018-00075, the applicant proposed to voluntarily contribute to the city's Affordable Housing Fund in an amount equivalent to the credit available under the terms of the Affordable Housing Commercial Linkage Fee for the existing Macy's retail building. The applicant indicated that it was in support of the Boulder Valley Comprehensive Plan (BVCP) Policy 1.10 which states,

"Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion."

In addition, the applicant proposed to further the project's consistency with the Site Review criteria through operation of the proposed retail space as a permanently affordable retail space in support of BVCP Policy 5.06, "Affordable Business Space & Diverse Employment Base" that states,

"The city and county will further explore and identify methods to better support businesses and non-profits that provide direct services to residents and local businesses by addressing rising costs of doing business in the city, including the cost of commercial space. The city will consider strategies, regulations, policies or new programs to maintain a range of options to support a diverse workforce and employment base and take into account innovations and the changing nature of the workplace."

Council then directed staff to draft additional conditions of approval for these voluntary offers. The proposed additional conditions are shown above as Conditions 5 and 6, and are underlined.

In addition, the applicant prepared the draft covenants attached to this memorandum (as **Attachments A** and **Attachment B**). The draft covenants are referenced in the additional conditions note above. The applicant also provided a strikethrough/underlined version of the Pollard covenant that was used as a basis to formulate the below-market retail covenant that is offered (**Attachment C**). The applicant provided a memo that describes the covenants and in particular the memo is intended to explain how the "Pollard covenant" was amended for use in this particular case (**Attachment D**). The applicant notes in the memo,

“As explained in the hearing, because the Pollard covenant related to office space and this covenant will relate to retail/restaurant space, the Pollard form would need to be adjusted to accommodate the differences between the office and retail/restaurant uses. Therefore, we have provided the below brief explanations of the material changes to the Pollard form that we negotiated with the City Attorney’s Office (with support from Community Vitality), to help Council understand the context that necessitated these changes.”

ATTACHMENT

Attachment A: Linkage Fee Covenant

Attachment B: Below-Market Retail Covenant

Attachment C: Pollard Covenant Redlined as Basis for Below-Market Retail Covenant

Attachment D: Memo to City from Applicant

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Charles J. Smith, Esq.

COVENANT REGARDING COMMERCIAL LINKAGE FEE

THIS COVENANT REGARDING COMMERCIAL LINKAGE FEE (this “**Covenant**”) is made and executed by and between MACY’S RETAIL HOLDINGS, LLC, an Ohio limited liability company (“**Owner**”), and THE CITY OF BOULDER, a Colorado home rule city (“**City**”), as of this ____ day of January, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the Owner owns certain real property described on Exhibit A attached hereto (the “**Property**”), whereupon certain improvements exist, including an existing building (the “**Existing Building**”) presently operated as a “Macy’s” retail store.

WHEREAS, the Owner intends to redevelop the Existing Building in accordance with that certain Site Review Amendment to the Twenty Ninth Street Shopping Center having File No. LUR2018-00075 (the “**Site Review**”) previously approved by the City (the “**Project**”).

WHEREAS, pursuant to Section 8-9-3 of the Boulder Municipal Code (the “**Code**”), the construction of commercial improvements having square footage contemplated pursuant to the Site Review would generally be subject to the assessment of a commercial linkage fee in an amount equal to FOUR MILLION EIGHT HUNDRED EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS AND 00/100 (\$4,808,680.00) (calculated with the assumption that the building permit application for the Project is submitted in 2021) (the “**Unadjusted Linkage Fee**”).

WHEREAS, pursuant to Section 8-9-3(c) of the Code, the Project is eligible to receive a credit against the Unadjusted Linkage Fee for the existing use of the Existing Building in an amount equal to THREE MILLION TWENTY-TWO THOUSAND FOUR HUNDRED DOLLARS AND 00/100 (\$3,022,400) (calculated based on the fee rate that applies to building permits submitted in 2021) (the “**Credit Amount**”), resulting in a total linkage fee for the Project equal to ONE MILLION SEVEN HUNDRED EIGHTY-SIX THOUSAND TWO HUNDRED EIGHTY AND 00/100 (\$1,786,280.00) (calculated with the assumption that the building permit for the Project is submitted in 2021; if the building permit is submitted later, the Project Linkage Fee, may be a different amount) (the “**Project Linkage Fee**”).

WHEREAS, Owner desires to voluntarily pay an additional sum equal to the Credit Amount in connection with the development of the Project.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

COVENANTS

1. **Payment of Credit Amount.** In addition to the Project Linkage Fee, Owner shall pay to the City a sum equal to the Credit Amount (\$3,022,400) in accordance with, and on or before the deadline set forth in, Section 8-9-3(b)(1) of the Code. The parties acknowledge and agree that Owner's agreement to pay the Credit Amount to the City is a voluntary election by Owner beyond its obligation under the Code to pay the Project Linkage Fee. The parties further acknowledge and agree that the Project Linkage Fee shall be paid on or before the deadline set forth in Section 8-9-3(b)(2) of the Code and be calculated based on the standards in Chapter 8-9 of the Code and the rate applicable in the year the building permit for the Project is submitted to the City.

2. **Default.** In the event that Owner breaches its obligations under Section 1 of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the City, the City may withhold approval of all development, certificate, and permit applications requested thereafter for the Property until any such breach has been cured. This remedy is in addition to all other remedies available to the City at law or equity. Notwithstanding anything to the contrary in this Covenant or in the Code, Owner shall not be liable under this Covenant for any actual, consequential, incidental, punitive, or indirect damages (including, but not limited to, lost profits).

3. **Attorneys' Fees.** In the event any litigation or legal proceeding arises out of this Covenant, the prevailing party shall be awarded from the other all of the prevailing party's costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs.

4. **Run With the Land.** This Covenant shall run with the land and the ownership of the Property, and the provisions hereof shall act as an appurtenant burden for the Property and the Owner, and its successors and assigns, and its mortgagees and their assigns.

5. **Term; Amendment.** The term of this Covenant shall automatically expire upon Owner's payment in full to the City of a sum equal to the Credit Amount, as evidenced by the City's issuance of a certificate of occupancy for the Project. Any amendment or modification to this Covenant may be effectuated only by a written instrument executed by the Owner and the City and recorded in the real property records of the County.

6. **Notices.** Any notice to Owner or the City, as the case may be, shall be sufficiently given only if in writing and delivered personally, by courier or private service delivery, by deposit with a nationally-recognized overnight carrier service with delivery charges prepaid, or, by deposit

in the mail for registered or certified mail, postage prepaid, return receipt requested, at the address provided below for the party receiving such notice:

If to Owner:

Macy's

[_____]

[_____]

[_____]

Attn: [_____]

With a Copy to:

Brownstein Hyatt Farber Schreck
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attn: Charlie J. Smith

If to the City:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Attorney

7. **Calculation of Time.** Whenever any date or the expiration of any period specified under this Covenant falls on a Saturday, Sunday or legal holiday for which the United States mail service is not provided, then such date or period shall be deemed extended to the next succeeding business day thereafter.

8. **Severability.** If any provision of this Covenant as applied to a particular circumstance shall be adjudicated as or otherwise found illegal and unenforceable, such illegality shall not affect the enforceability of any other provision of this Covenant, or the offending provision as applied to circumstances for which it is enforceable, it being intended that all provisions of this Covenant be valid and enforceable to the fullest extent legally permissible.

9. **Captions.** The captions and headings of the various provisions of this Covenant are for convenience and identification only, and shall not be deemed to limit or define the operative provisions of this Covenant.

10. **Venue; Waiver of Jury Trial.** This Covenant is made and entered into in Boulder County, Colorado and is governed by and its terms shall be construed under the laws of the State of Colorado. Any action relating to this Covenant shall be brought and prosecuted only in the courts of the County of Boulder, State of Colorado, and each party waives any right or claim of right to elect or require action to be brought or maintained, or venue changed, to any other place. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11. **Transfer of Ownership.** Any buyer or transferee of the fee interest in Property or of any portion thereof, shall, by acceptance of such deed, be deemed to have consented to and accepted the obligations of Owner set forth herein and, upon such buyer or transferee's acceptance of such deed, the previous Owner shall be released in full from the obligations hereunder.

12. **Mortgagees.** Written notice of any default of Owner hereunder shall be delivered concurrently to all holders or trustees of any mortgage or deed of trust or similar security instrument of record (each, a "**Mortgagee**") to be effective. A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Covenant by Owner whose property is secured by the Mortgagee's mortgage, deed of trust, or similar security instrument, within any applicable cure period provided for the cure of such breach hereunder and the City agrees to accept such cure by the Mortgagee as if performed by Owner. The definition of Owner under this Covenant shall not include any Mortgagee that holds a security interest or title to a part of the Property as security, but is not in actual possession of the Property, but shall include any Mortgagee who has fee simple title to a part of the Property by virtue of a foreclosure or deed in lieu of a foreclosure, and is in actual possession of such Property. No amendment to this Covenant shall be effective without the prior written consent of all Mortgagees of record.

13. **Estoppel.** The City, within thirty (30) days after receipt of a notice requesting the same from Owner, shall deliver a written estoppel certificate setting forth that, to the knowledge of the City, the Owner is not in default in the performance of any of its obligations under this Covenant, or, if in default, setting forth the nature of such default, and setting forth the status of such other matters related to this Covenant as the Owner may reasonably specify for disclosure. If the City fails to deliver the requested estoppel certificate within the requisite time period, then it shall be conclusively deemed that the Owner is not then in default of any obligations under this Covenant. The notice to the City requesting a written estoppel certificate shall reference this Covenant and its recording number in the Records of the Boulder County Clerk and Recorder and shall advise the City that if the City fails to deliver the requested estoppel certificate within 30 days of receipt of the notice, then it will be conclusively deemed that the Owner is not then in default of any obligation under this Covenant.

14. **No Rights in Public Generally.** This Covenant and the rights created, reserved, granted and established hereunder do not, are not intended to and shall not be construed to create any easements, rights or privileges in and for the benefit of any governmental agencies, authorities and subdivisions having jurisdiction over the development and use of the Property or any part thereof other than the City, or to the general public.

15. **Counterparts.** This Covenant may be executed by the parties and transmitted by PDF or other electronic means and if so executed and transmitted this Covenant will be for all purposes as effective as if the parties had delivered an executed original Covenant. This Covenant may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the Effective Date.

OWNER:

MACY’S RETAIL HOLDINGS, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

CITY:

CITY OF BOULDER

By: _____
Chris Meschuk, Interim City Manager

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, this ____ day of _____, 2021, a Notary Public in and for the County of Boulder, State of Colorado, by Chris Meschuk, Interim City Manager of the City of Boulder.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

22059928.7

EXHIBIT A

Legal Description of Property

LOT 5, NINTH STREET, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 2005, IN FILE P-63, NO.'S 18 THROUGH 24, UNDER RECEPTION NO. 2673341, COUNTY OF BOULDER, STATE OF COLORADO.

22059928.7

BELOW-MARKET RATE COMMERCIAL COVENANT

This Below-Market Rate Commercial Covenant (“Covenant”) is entered into as of the ____ day of, January ___, 2021 (the “Effective Date”), by and between MACY’S RETAIL HOLDINGS, LLC, an Ohio limited liability company (“Owner”), and the City of Boulder, a Colorado home rule city (“City”).

RECITALS

A. The Owner owns certain real property described on Exhibit A attached hereto (the “Property”).

B. The City desires that the Property be adaptively reused in accordance with Site Review Amendment to the Twenty Ninth Street Shopping Center having File No. LUR2018-00075, which was approved by the City on January 5, 2021. Consistent with the Site Review Amendment, the Property will include no less than 7,500 square feet of gross leasable area of Below-Market Rent Commercial Space to provide a public benefit to non-profit entities and small, local and independent business owners as well as the community.

C. The parties agree that having such commercial space set aside for Below-Market Rate Rent will encourage the development of small local business and will preserve Small, Local, and Independent businesses and Non-profits which are being priced out of Boulder as locations redevelop and commercial rents escalate.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

- A. “Below-Market Rate Rent” means base net rent up to a maximum of 80% of the Market Rate.
- B. “Eligible” means a business that is eligible to lease a Below-Market Rate Commercial Space unit under Section 6 hereof.
- C. “Independent” means a business with at least 50 percent of the business owned by people whose principal residence is within Boulder County and decision-making authority regarding day-to-day operations is vested in such owners, subject to customary major decisions in the business’s bylaws, operating agreement, franchise agreements, loan documents, or other governing documents or agreements. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and not the franchisor business or brand.

- D. “Local” means a business that has its headquarters, is based in, or has its principal place of business in Boulder County. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and not the franchisor business or brand.
- E. “Market Rent” means the average base net rent paid for commercial retail and restaurant spaces within the City of Boulder that are comparable to the Below-Market Rent Commercial Space. In calculating the Market Rent, factors such as the location, size, age, use, and condition of the comparable properties, lease terms (including without limitation, the term of the lease, tenant improvement allowances, rent abatements, leasing incentives, etc.), and other factors customarily taken into account when calculating market rent for commercial retail and restaurant spaces will be considered to make a reasonable determination.
- F. “Minority- or women-owned business” means a for-profit corporation, limited liability partnership or other enterprise which is owned and operated by one or more women or one or more ethnic minorities certified as such by a federal, state or local agency or for which the business owner/operator can provide proof of qualification and majority ownership interest in the enterprise.
- G. “Non-profit” means an organization with 501(c)3 status which is headquartered, based, or has its principal place of business in Boulder County and has a service area including the City of Boulder and its residents.
- H. “Operating Expenses” means common area maintenance charges, charges for taxes, fees, insurance, maintenance, utilities, property management, and janitorial services, or any other operating expenses customary for a commercial retail or restaurant lease.
- I. “Small” means that the business has seven (7) or fewer independent locations. If the subject business is a franchise, the foregoing criteria shall apply to the franchisee entity only and not the franchisor business or brand.

COVENANTS

1. Recitals: The Recitals are incorporated into this Covenant by this reference as if more fully set forth herein.
2. Below-Market Rent Commercial Space Required: Owner agrees that the Property will include no less than 7,500 square feet in gross leasable area of commercial space for which Owner will charge Below-Market Rate Rent (“Below-Market Rent Commercial Space”), consisting of one or more individual rental units (“units”) leased directly to Eligible tenants or to one or more intermediary tenants for co-working or marketplace/market-hall areas that then subleases or licenses units to one or more Eligible tenants.
3. Maximum Below-Market Rate Rent:

- a. Below-Market Rate Rent shall be determined based on the Owner's calculation of Market Rent, and the Owner shall send written notice to the City of Owner's calculation of Below-Market Rate Rent. The City shall have fifteen (15) days thereafter to approve or disapprove of the Below-Market Rate Rent by written notice to Owner. If the City fails to approve or disapprove of the Below-Market Rate Rent within such 15-day period, the proposed Below-Market Rate Rent shall be deemed approved.
- b. The maximum Below-Market Rate Rent may be increased annually by the Owner at the greater of (i) 3%, or (ii) the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average. Notwithstanding anything to the contrary in this Covenant, this Covenant shall not apply to or restrict Owner from charging Operating Expenses or percentage rent in addition to Below-Market Rate Rent, regardless of whether rent under the applicable lease is charged on a gross or net basis. For purposes of clarification, if rent is charged on a gross basis, then the base net rent component of such gross rent shall be the Below-Market Rate Rent and the Operating Expenses component of such gross rent shall be in addition to the Below-Market Rate Rent.
- c. Every five years commencing on the date of this Covenant, the Owner shall recalibrate the Below-Market Rate Rent determination to apply to each new lease, lease renewal or lease extension that Owner executes thereafter by analyzing then then-current Market Rent ("Recalibration Rate").
- d. Owner shall give notice and copies of the Recalibration Rate to the City prior to executing any leases, lease renewals, or lease extensions that include the Recalibration Rent. The City shall have fifteen (15) days thereafter to approve or disapprove of the Recalibration Rent by written notice to Owner. If the City fails to approve or disapprove of the Recalibration Rent within such 15-day period, the proposed Recalibration Rent shall be deemed approved.
- e. In the event the City timely disapproves of the Below-Market Rate Rent or Recalibration Rate, its notice shall set forth the specific basis for such disapproval to be effective. If the City and Owner are unable to agree on the Below-Market Rate Rent or Recalibration Rate within 30 days after delivery of such disapproval notice to Owner, either (i) within 10 days after notice from either party to the other, they will jointly select a qualified real estate professional with at least 10 years' experience in calculating Market Rent, who will make a final determination within 10 business days after being selected, with the cost of this additional service to be shared equally by Owner and the City, or (ii) if they are unable to agree upon such a qualified real estate professional, then within 10 days after notice from either party to the other, each shall select a qualified real estate professional (the Owner and City to pay the costs of their respective professional) with at least 10 years' experience in calculating Market Rent and, within 10 days after being selected, the two professionals shall calculate the Below-Market Rate Rent or Recalibration Rate and select a third qualified real estate professional with at least 10 years' experience in calculating Market Rent, to review both

analyses and make a final determination of the Below-Market Rate Rent or Recalibration Rate within 10 business days after being selected, which shall be the Below-Market Rate Rent or Recalibration Rent proposed by one of the professionals selected by the Owner and the City, with the cost of this additional service to be shared equally by Owner and the City.

4. Subdivision Provisions. If the Below-Market Rent Commercial Space is divided into commercial condominium units through subdivision, this Covenant shall run with and burden each subdivided Below-Market Rent Commercial Space condominium unit; provided, however, that the requirement that the Property include 7,500 square feet in Below-Market Rent Commercial Space shall continue to apply to the Property as a whole and not separately to each condominium unit. The owner of each such condominium unit shall be deemed to be the Owner for such condominium unit and shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such condominium.
5. Marketing. The Owner and the City will work together in good faith to promote the availability of the Below-Market Rent Commercial Space to potential Eligible tenants, in accordance with the Owner's marketing strategy.
6. Tenant Eligibility and Preferences.
 - a. To be eligible to lease any portion of the Below-Market Rent Commercial Space, at the time of lease execution, an applicant must be a: (1) a Small, Local, and Independent business; or (2) a Minority- or women-owned business; or (3) a Non-profit (each an "Eligible" tenant). Notwithstanding anything to the contrary in this Covenant, in the event that any unit within the Below-Market Rent Commercial Space is to be used for a co-working or marketplace/market-hall use, and the lease with such tenant requires the tenant to sublease or license such unit (or portions thereof) only to Eligible subtenants or licensees for Below-Market Rate Rent (based on Market Rent for units in a co-working or marketplace/market-hall use) in accordance with this Covenant, then this Covenant shall not apply to the lease of such unit to such tenant, Owner may lease such unit to any tenant on terms and conditions acceptable to Owner, such tenant shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such unit and its subtenants and licensees, and the square footage of the unit subleased or licensed by such tenant shall be deemed included as Below-Market Rent Commercial Space.
 - b. The Owner may require applicants to demonstrate their financial capability to rent the Below-Market Rent Commercial Space using standard industry practices in Boulder County, including without limitation requesting such applicant's tax returns, financial statements, references, and personal or corporate guarantees. Owner shall not be required to execute a lease with any specific applicant and shall have the right to select specific tenants in its sole and absolute discretion, subject to Sections 6.a, 6.d, and 12.

- c. Concurrent with the execution of a lease for a portion of the Below-Market Rent Commercial Space, each Eligible tenant shall execute, notarize and deliver to Owner an eligibility estoppel certificate confirming such tenant's Eligible status, in form mutually and reasonably acceptable to Owner and the City ("Eligibility Estoppel Certificate"). Owner shall deliver a copy of the Eligibility Estoppel Certificate for each Below-Market Rate Rent lease to the City. Owner shall have the right to rely upon the Eligibility Estoppel Certificate, shall have no liability or responsibility under this Covenant or otherwise for any untruth or misrepresentation contained in any Eligibility Estoppel Certificate, and shall have no obligation to terminate any lease with a tenant that submitted a false Eligibility Estoppel Certificate, but shall not agree to any discretionary renewal or extension of its lease with such tenant.
- d. Owner shall engage in commercially reasonable leasing efforts to lease available units within the Below-Market Rent Commercial Space to one or more Eligible tenants, including without limitation by retaining a commercial real estate broker to market the available units. Notwithstanding anything to the contrary in this Covenant, if no Eligible tenant that satisfies Owner's underwriting qualifications signs a lease for a Below-Market Rent Commercial Space unit within 120 days after the commencement of marketing of such Below-Market Rent Commercial Space unit despite Owner's commercially reasonable leasing efforts, this Covenant shall not apply to such unit and the Owner may rent such unit to any tenant on terms and conditions acceptable to Owner, in its sole and absolute discretion; provided, however, that the initial term of the lease with such non-Eligible tenant shall not exceed 10 years.

7. Lease Renewal.

- a. If at renewal of a Below-Market Rent Commercial Space lease the Eligible tenant no longer satisfies the eligibility criteria under Section 6.a above, the tenant may renew for one-year to give the tenant time to relocate the business, subject to Section 6.d. After that one-year period, the tenant must vacate the Below-Market Rent Commercial Space unless the City finds community benefit in allowing the tenant to continue leasing, subject to Section 6.d.
- b. The Owner may allow a Below-Market Rent Commercial Space tenant to sublet some or all of its unit if the tenant sublets to one or more Eligible subtenants and the average base gross or net rental rate per square foot for such subleases is no greater than that paid by the tenant under the Below-Market Rent Commercial Space lease. The sublandlord shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant with respect to its subtenants. If no Eligible subtenant that satisfies such tenant's underwriting qualifications and is approved by Owner can be found within 21 days, the tenant may, after notice to the City, lease the space to any subtenant for the balance of the

tenant's term at no more than the tenant's rental rate under the Below-Market Rent Commercial Space lease.

- c. The City shall have the right to audit all Below-Market Rate Rent leases with Eligible tenants for substantial compliance with the requirements of this Covenant, provided that the City acknowledges that such leases and the terms and conditions therein constitute confidential, proprietary business information, not subject to disclosure under the Colorado Open Records Act ("CORA"), C.R.S. 24-72-201 et seq., and the City shall keep such leases confidential.
- d. Upon written request from the City for such an audit, the Owner shall submit to the City copies of the then existing Below-Market Rate Rent leases with Eligible tenants, and the City shall have fifteen (15) days thereafter to confirm compliance thereof with this Covenant. If the City fails to confirm compliance or give written notice of non-compliance of any such Below-Market Rate Rent lease with such 15-day period, such lease shall be deemed compliant with this Covenant.

8. Defaults and Penalties.

- a. If the City becomes aware that any Owner is charging more than the maximum allowed Below-Market Rate Rent in violation of this Covenant or is otherwise in violation of this Covenant, the City shall deliver written notice to such Owner, which notice shall describe the specific basis for the alleged violation in reasonable detail to be effective.
- b. Such Owner will have 30 days to cure the violation and provide impacted tenants with a refund of over-charged rent.

9. Enforcement Actions. This Covenant may be specifically enforced against the then-current Owner(s) of the Below-Market Rent Commercial Space. Venue for such action shall be proper in Boulder County. Enforcement actions may include, without limitation, repayment of overcharges to tenants or lawsuit for actual damages. Notwithstanding the foregoing, the City shall take no enforcement action against Owner in connection with any Below-Market Rate Rent lease for which Owner has delivered to the City an executed Eligibility Estoppel Certificate from such tenant. Notwithstanding anything to the contrary in this Covenant or at law or in equity, in no event shall Owner be liable for consequential, punitive, special, incidental, lost profits, or other damages, except actual damages, for any violation of this Covenant, and all such remedies are hereby waived.

10. Indemnification. The then-current Owner(s) of the Below-Market Rent Commercial Space shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities alleged by third-parties and incurred as a result of such Owner's violation of this Covenant or the gross negligence or intentional misconduct of such Owner or its agents or employees in the performance of the Owner's obligations under this Covenant, and as part of such indemnification obligation shall pay all costs and reasonable attorney's fees, if any, incurred by the City as a result of any such claims or suits; provided, however, that the Owner shall not be

required to indemnify the City from any losses, claims, suits, judgments or liabilities arising from the negligence, intentional misconduct, or illegal or unconstitutional acts of the City or its agents or employees or the actions or inactions of any tenants.

11. The Owner(s) of the Below-Market Rent Commercial Space shall maintain (or cause the tenants to maintain) such space in a manner comparable to similar commercial space in the City of Boulder.
12. The Owner shall only permit the Below-Market Rent Commercial Space to be used in compliance with all applicable laws and regulations of the United States, State of Colorado and City of Boulder.
13. Either the City or Owner, by written notice to the other party, but not more than once in any 12-month period, may request a meeting with the other party to review in good faith the leasing performance of the Below-Market Rent Commercial Space (including without limitation, vacancy rates, rental rates, and other relevant leasing information) and the terms and conditions of this Covenant, in which event the two parties shall meet to discuss the same within 30 days after delivery of such notice.
14. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, to the extent that the original intent of this Covenant can still be effected, the remaining provisions shall survive, and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.
15. Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.
16. The Owner hereby acknowledges, affirmatively states, and agrees that this Covenant is a bargained for deed restriction that limits commercial rent on the Below-Market Rent Commercial Space of the Property in accordance with the terms and conditions herein.
17. By mutual written agreement, the parties may make changes or exceptions to the terms of this Covenant.
18. This Covenant shall run with the land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Covenant shall be unlawful or void for violation of:
 - a. the rule against perpetuities or some other analogous statutory provision;
 - b. the rule restricting restraints on alienation; or
 - c. any other statutory or common law rules imposing like or similar time limits,

then such provision shall continue only for the period of the lives of current duly elected and seated Boulder City Council members, their now living descendants, if any, and the survivor of them, plus 21 years, or until the Termination Date, whichever is earlier in time.

19. Any buyer or transferee of the Below-Market Rent Commercial Space of the Property or of any portion thereof or interest therein, by acceptance of a deed therefor, shall, by acceptance of such deed, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
20. Term. This Covenant shall continue to run with the land and burden the Property into perpetuity unless and until (a) the improvements on the Property approved in the Site Review Amendment to the Twenty Ninth Street Shopping Center under File No. LUR2018-00075 are redeveloped, adaptively reused, or repurposed, (b) the primary use of the building containing the Below-Market Rent Commercial Space is no longer general office use, (c) a casualty or condemnation (or transaction in lieu of a condemnation) destroys or takes a material portion of the improvements on the Property, or (d) the properties that are immediately adjacent to the Property to the west, south, and east are no longer used primarily for retail or restaurant uses or for parking for adjacent retail or restaurant uses (each, a "Termination Event"). Upon the occurrence of a Termination Event, this Covenant shall automatically and forever terminate and be of no force or effect, without need for any notice or further action of the Owner, City, or any other person or party, effective on the date of such Termination Event ("Termination Date"). Without affecting the self-effectuating provisions of the immediately preceding sentence, in the event of a Termination Event, the Owner shall send the City written notice of the same, and if the Owner requests that the City execute a written termination of this Covenant, then the City shall execute the same and deliver the executed termination to the Owner within 30 days after receipt of such request for Owner to record in the real property records for the Property.
21. Notices. Any notice or other communication provided for or permitted by this Covenant to be made or accepted by either party must be in writing and shall be given or served by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested; by depositing the same with a nationally-known overnight courier service to such party; by hand delivering the same to such party, or an agent of such party; or by sending an e-mail to such party followed by a hard copy notice delivered on or before the next business day pursuant to one of the foregoing other methods of delivery, all to the applicable addresses set forth below. Notice deposited in the mail shall be deemed received two (2) business days after such deposit and notice given in any other manner shall be deemed delivered when actually sent for delivery to the party to be notified. The parties shall have the right from time to time to change their respective contact information as stated below by written notice to the other party.

To Owner:

With copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Charlie Smith
Email: cjsmith@bhfs.com

To the City:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Manager, Chris Meschuk
Email: meschukc@bouldercolorado.gov

With copy to:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Attorney, Tom Carr
Email: carrt@bouldercolorado.gov

(signature page follows)

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the Effective Date.

Owner:

MACY'S RETAIL HOLDINGS, LLC,
an Ohio limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ of MACY'S CALIFORNIA, LLC, an Ohio limited liability company.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

City:

CITY OF BOULDER

By: _____
Chris Meschuk, Interim City Manager

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, this _____ day of _____, 2021, a Notary Public in and for the County of Boulder, State of Colorado, by Chris Meschuk, Interim City Manager of the City of Boulder.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

Exhibit A

Property Legal Description

LOT 5, NINTH STREET, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 2005, IN FILE P-63, NO.'S 18 THROUGH 24, UNDER RECEPTION NO. 2673341, COUNTY OF BOULDER, STATE OF COLORADO.

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

BELOW-MARKET RATE COMMERCIAL COVENANT

This Below-Market Rate Commercial Covenant ("Covenant") is entered into as of the ____ day of, January ~~20~~, 2021 (the "Effective Date"), by and between ~~Morgan Creek Ventures, LLC~~ MACY'S RETAIL HOLDINGS, LLC, an Ohio limited liability company ("Owner"), and the City of Boulder, a Colorado home rule city ("City").

RECITALS

A. The Owner owns certain real property described on Exhibit A attached hereto (the "Property").

B. ~~Consistent with the adopted Transit Village Area Plan ("TVAP"), the~~ The City desires that the Property be ~~redeveloped as part of a vibrant mixed-use, pedestrian-oriented neighborhood. The~~ adaptively reused in accordance with Site Review Amendment to the Twenty Ninth Street Shopping Center having File No. LUR2018-00075, which was approved by the City on January 5, 2021. Consistent with the Site Review Amendment, the Property will include no less than 9,300~~7,500~~ square feet of ~~below-market rate commercial space~~ gross leasable area of Below-Market Rent Commercial Space to provide a public benefit to non-profit entities and small, local and independent business owners as well as the community.

C. The parties agree that having such commercial space set aside for ~~below-market rate rents~~ Below-Market Rate Rent will encourage the development of small local business and will preserve ~~small-local-independent~~ Small, Local, and Independent businesses and ~~non~~ Non-profits which are being priced out of Boulder as locations ~~redevelop~~ and commercial rents escalate.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

A. "Below-Market Rate Rent" means base net rent up to a maximum of ~~85% of the Market Rate; provided that the Below Market Rate Rent, on average for the initial year, does not exceed 75~~ 80% of the Market Rate.

B. "Eligible" means a business that is eligible to lease a Below-Market Rate Commercial Space unit under Section 6 hereof.

- C. "Independent" means ~~that the~~ business ~~or non-profit~~ with at least 50 percent of the business ~~is~~ owned by people whose principal residence is within Boulder County and decision-making authority regarding day-to-day operations is vested in ~~the local~~ such owners ~~and not subject to conditions dictated remotely~~, subject to customary major decisions in the business's bylaws, operating agreement, franchise agreements, loan documents, or other governing documents or agreements. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and not the franchisor business or brand.
- D. "Local" means a business ~~which~~ that has its headquarters, is based in, or has its principal place of business in Boulder County. If the subject business is a franchise, the foregoing criteria shall apply to the franchise entity only and at least half of not the franchisor business' employees must work in Boulder County or brand.
- E. "Market Rent" means the average ~~Rent~~ base net rent paid for ~~comparable~~ commercial ~~space~~ retail and restaurant spaces within the City of Boulder that are comparable to the Below-Market Rent Commercial Space. In calculating the Market Rent, factors such as the location, size, age, use, and condition of the comparable properties, lease terms (including without limitation, the term of the lease, tenant improvement allowances, rent abatements, leasing incentives, etc.), and other factors customarily taken into account when calculating market rent for commercial retail and restaurant spaces will be considered to make a reasonable determination.
- F. "Minority- ~~and/or~~ women-owned business" means a for-profit corporation, limited liability partnership or other enterprise which is owned and operated by ~~a woman~~ one or ~~an~~ more women or one or more ethnic ~~minority~~ minorities certified as such by a federal, state or local agency or for which the business owner/operator can provide proof of qualification and majority ownership interest in the enterprise, ~~its assets and stock~~.
- G. "Non-profit" means an organization with 501(c)3 status which is headquartered, based, or has its principal place of business in Boulder County and has a service area including the City of Boulder and its residents.
- H. "Rent Operating Expenses" means ~~the Below Market Rate Rent for the Below Market Rent Commercial Space, together with 100% of all operating costs for the Below Market Rate Commercial Space, including but not limited to: improvement costs, property~~ common area maintenance charges, charges for taxes, fees, insurance and association fees, maintenance, utilities, property management, and janitorial services, or any other operating expenses customary for a commercial retail or restaurant lease.

- I. "Small" means ~~gross revenue under \$2,000,000 when this Covenant is signed and as adjusted annually for inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average or as the Parties mutually agree thereafter~~ that the business has seven (7) or fewer independent locations. If the subject business is a franchise, the foregoing criteria shall apply to the franchisee entity only and not the franchisor business or brand.

COVENANTS

1. Recitals: The Recitals are incorporated into this Covenant by this reference as if more fully set forth herein.
2. Below-Market Rent Commercial Space Required: Owner agrees that the Property will include no less than ~~9,300~~ 7,500 square feet in gross leasable area of commercial space ~~with below-market rents for which Owner will charge Below-Market Rate Rent~~ ("Below-Market Rent Commercial Space"), consisting of one or more individual rental units ("units") ~~that either (i) average no more than 3,000 square feet, or (ii) such larger area available~~ leased directly to Eligible tenants or to one or more intermediary tenants for co-working or marketplace/market-hall areas by and that then subleases or licenses units to one or more Eligible tenant tenants.
3. Maximum Below-Market Rate Rent ~~and Improvement Costs:~~
 - a. Below-Market Rate Rent shall be determined based on ~~CoStar or similar actual leasing data including the market rate commercial space on the Property to identify potential comparable properties in the Boulder Junction/mid-market area, which initial rental rates will be jointly agreed upon by the Parties~~ the Owner's calculation of Market Rent, and the Owner shall send written notice to the City of Owner's calculation of Below-Market Rate Rent. The City shall have fifteen (15) days thereafter to approve or disapprove of the Below-Market Rate Rent by written notice to Owner. If the City fails to approve or disapprove of the Below-Market Rate Rent within such 15-day period, the proposed Below-Market Rate Rent shall be deemed approved.
 - b. The maximum Below-Market Rate Rent may be increased annually by the Owner at the greater of (i) 3%, or (ii) the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average. ~~Pass-through expenses for operating costs~~ Notwithstanding anything to the contrary in this Covenant, this Covenant shall be as actually incurred and not subject apply to the CPI-U limit ~~or restrict Owner from charging Operating Expenses or percentage rent in addition to Below-Market Rate Rent, regardless of whether rent under the applicable lease is charged on a gross or net basis. For purposes of clarification, if rent is charged on a gross basis, then the base net rent component of such gross rent shall be the Below-Market Rate Rent and the Operating Expenses component of such gross rent shall be in addition to the Below-Market Rate Rent.~~

- ~~e. Below market rate and market rate tenants will be responsible for all improvement costs and actual triple net operating expenses including but not limited to: property taxes, insurance and association fees, maintenance, utilities, property management and janitorial services.~~
- c. ~~d.~~ Every five years commencing on the date of this Covenant, the Owner shall recalibrate the Below-Market Rate Rent determination ~~for to apply to~~ each new lease, lease renewal or lease extension that Owner executes thereafter by analyzing comparable properties based on CoStar or similar actual leasing data including the Market Rent commercial space on the Property to identify potential comparable properties in the Boulder Junction/mid-market area then then-current Market Rent (“Recalibration Rate”).
- d. ~~e.~~ Owner shall give notice and copies of the ~~recalibration study~~ Recalibration Rate to the City prior to executing any ~~change in the Below-Market Rate Rent~~ leases, lease renewals, or lease extensions that include the Recalibration Rate. The City shall have fifteen (15) days thereafter to approve or disapprove of the Recalibration Rate by written notice to Owner. If the City fails to approve or disapprove of the Recalibration Rate within such 15-day period, the proposed Recalibration Rate shall be deemed approved.
- e. ~~f.~~ In the event the City timely disapproves of the Below-Market Rate Rent or Recalibration Rate, its notice shall set forth the specific basis for such disapproval to be effective. If the City and Owner are unable to agree on the Below-Market Rate Rent or Recalibration Rate within 30 days after delivery ~~thereof by~~ of such disapproval notice to Owner, either (i) within 10 days after notice from either party to the other, they will jointly select a qualified real estate professional, ~~or (ii)~~ with at least 10 years’ experience in calculating Market Rent, who will make a final determination within 10 business days after being selected, with the cost of this additional service to be shared equally by Owner and the City, or (ii) if they are unable to agree upon such a qualified real estate professional, then within 10 days after notice from either party to the other, each shall select a qualified real estate professional and (the Owner and City to pay the costs of their respective professional) with at least 10 years’ experience in calculating Market Rent and, within 10 days after being selected, the two professionals shall calculate the Below-Market Rate Rent or Recalibration Rate and select a third qualified real estate professional with at least 10 years’ experience in calculating Market Rent, to review both analyses and make a final determination of the Below-Market Rate Rent or Recalibration Rate within 10 business days after being selected, which shall be the Below-Market Rate Rent or Recalibration Rate proposed by one of the professionals selected by the Owner and the City, with the cost of this additional service to be shared equally by Owner and the City.
4. Subdivision Provisions. ~~a.~~ If the Below-Market Rate Commercial Space is divided into commercial condominium units through subdivision, ~~these~~ this Covenant ~~restrictions~~ shall ~~apply to~~ run with and burden each subdivided Below-Market Rent

Commercial Space condominium unit; provided, however, that the requirement that the Property include 7,500 square feet in Below-Market Rent Commercial Space shall continue to apply to the Property as a whole and not separately to each condominium unit. The owner of each such condominium unit shall be deemed to be the Owner for such condominium unit and shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such condominium.

- ~~b. For each Below Market Rent Commercial Space condominium unit, such unit shall be a separate unit within the building and the condominium subdeclaration shall include refer to the restrictions set forth herein.~~
- ~~c. Subject to requirements of the Colorado Common Interest Community Act or any successor statute, provisions in the subdeclaration shall not burden the Below Market Rent Commercial Space condominium unit(s) with more assessment costs and expenses than the other commercial uses located in the same building. The subdeclaration will give the each owner of a Below Market Rent Commercial Space condominium unit the right to further condominiumize the Below Market Rent Commercial Space condominium unit in order to subdivide it in the future, if the unit owner so chooses, for the purpose of selling commercial spaces at an affordable price if so desired, in which event the Below Market Rent Commercial Space condominium unit owner may record its own secondary subdeclaration and map under applicable CCIOA requirements or exceptions thereto, which Below Market Rent Commercial Space condominium unit subdeclaration shall remain subject to the master declaration and any subdeclaration for the building. In either event, the Below Market Rent Commercial Space condominium unit shall be divided into rentable or co-occupancy spaces for rent (or sale if so subdivided) to individual businesses.~~

5. Marketing. The Owner and the City will work together in good faith to promote the availability of the Below-Market Rent Commercial Space to potential Eligible tenants, in accordance with the Owner's marketing strategy.

6. Tenant Eligibility and Preferences.

- a. To be ~~Eligible~~eligible to lease any portion of the Below-Market Rent Commercial Space, at the time of lease execution, an applicant must ~~meet the following criteria~~be a: (1) a Small, Local, and Independent business; or (2) a Minority- or women-owned business; or (3) a Non-profit (each an "Eligible" tenant). Notwithstanding anything to the contrary in this Covenant, in the event that any unit within the Below-Market Rent Commercial Space is to be used for a co-working or marketplace/market-hall use, and the lease with such tenant requires the tenant to sublease or license such unit (or portions thereof) only to Eligible subtenants or licensees for Below-Market Rate Rent (based on Market Rent for units in a co-working or marketplace/market-hall use) in

accordance with this Covenant, then this Covenant shall not apply to the lease of such unit to such tenant, Owner may lease such unit to any tenant on terms and conditions acceptable to Owner, such tenant shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant for such unit and its subtenants and licensees, and the square footage of the unit subleased or licensed by such tenant shall be deemed included as Below-Market Rent Commercial Space.

- b. The Owner may require applicants to demonstrate their financial capability to rent the Below-Market Rent Commercial Space using standard industry practices in Boulder County, including without limitation requesting such applicant's tax returns, financial statements, references, and personal or corporate guarantees. Owner shall not be required to execute a lease with any specific applicant and shall have the right to select specific tenants in its sole and absolute discretion, subject to Sections 6.a, 6.d, and 12.
- c. Concurrent with the execution of a lease for a portion of the Below-Market Rent Commercial Space, each Eligible tenant shall execute, notarize and deliver to Owner an eligibility estoppel certificate confirming such tenant's Eligible status, in form mutually and reasonably acceptable to Owner and the City ("Eligibility Estoppel Certificate"). Owner shall deliver a copy of the Eligibility Estoppel Certificate for each Below-Market Rate Rent lease to the City. Owner shall have the right to rely upon the Eligibility Estoppel Certificate, shall have no liability or responsibility under this Covenant or otherwise for any untruth or misrepresentation contained in any Eligibility Estoppel Certificate, and shall have no obligation to terminate any lease with a tenant that submitted a false Eligibility Estoppel Certificate, but shall not agree to any discretionary renewal or extension of its lease with such tenant.
- d. Owner shall engage in commercially reasonable leasing efforts to lease available units within the Below-Market Rent Commercial Space to one or more Eligible tenants, including without limitation by retaining a commercial real estate broker to market the available units. Notwithstanding ~~Section 6.a above~~ anything to the contrary in this Covenant, if ~~there are no~~ Eligible ~~applicants~~ tenant that satisfies Owner's underwriting qualifications signs a lease for a Below-Market Rent Commercial Space unit within ~~60~~120 days after the commencement of marketing of ~~any available portion of the~~ such Below-Market Rent Commercial Space, unit despite Owner's commercially reasonable leasing efforts, this Covenant shall not apply to such unit and the Owner may rent such unit to any tenant on terms and conditions acceptable to Owner, in its sole and absolute discretion; provided, however, that the initial term of the lease with such non-Eligible tenant shall not exceed 10 years.

7. Lease ~~Terms and~~ Renewal.

- ~~a. No Below Market Rent Commercial Space lease shall be for a term of not less than three years or more than five years.~~
- ~~b. Below Market Rent Commercial Space leases may be renewed for a term of not less than one year or more than five years as long as all eligibility criteria are still met.~~
- a. ~~e.~~ If at renewal of a Below-Market Rent Commercial Space lease the Eligible tenant no longer satisfies the eligibility criteria under Section 6.a above, the tenant may renew for one-year to give the tenant time to relocate the business.—, subject to Section 6.d. After that one-year period, the tenant must vacate the Below-Market Rent Commercial Space unless the City finds community benefit in allowing the tenant to continue leasing, subject to Section 6.d.
- b. ~~d.~~ The Owner may allow a Below-Market Rent Commercial Space tenant to sublet some or all of its unit if the tenant sublets to ~~anone or more~~ Eligible subtenantsubtenants and the average base gross or net rental rate per square foot for such subleases is no greater than that paid by the tenant under the Below-Market Rent Commercial Space lease. ~~If no qualifying sublessee~~The sublandlord shall be solely responsible for compliance with this Covenant and performance of Owner's obligations under this Covenant with respect to its subtenants. If no Eligible subtenant that satisfies such tenant's underwriting qualifications and is approved by Owner can be found ~~after~~within 21 days, the tenant may ~~apply, after notice~~ to the City ~~to~~ lease the space to any subtenant for ~~up to one year~~the balance of the tenant's term at no more than the tenant's rental rate under the Below-Market Rent Commercial Space lease.
- c. ~~e.~~ The City shall have the right to audit all Below-Market Rate Rent leases ~~and with~~ Eligible tenants ~~thereunder~~ for substantial compliance with the requirements of this Covenant, provided that the City acknowledges that such leases and the terms and conditions therein constitute confidential, proprietary business information, not subject to disclosure under the Colorado Open Records Act ("CORA"), C.R.S. 24-72-201 et seq., and the City shall keep such leases confidential.
- d. ~~f.~~ Upon written request from the City for such an audit, the Owner shall submit to the City's ~~Housing Department~~ copies of the then existing Below-Market Rate Rent leases with Eligible tenants, and the City shall have fifteen (15) days thereafter to confirm compliance thereof with this Covenant. If the City's ~~Housing Department~~ fails to confirm compliance or give written notice of non-compliance of any such Below-Market Rate Rent lease with such 15-day period, such lease shall be deemed ~~approved~~compliant with this Covenant.

8. Defaults and Penalties.

- a. If the City becomes aware that any Owner is charging more than the maximum allowed ~~rent under~~Below-Market Rate Rent in violation of this Covenant or is otherwise in violation of this Covenant, the City shall

- deliver written notice to such Owner, which notice shall describe the specific basis for the alleged violation in reasonable detail to be effective.
- b. Such Owner will have 30 days to cure the violation and provide impacted tenants with a refund of over-charged rent. ~~If the default is not cured within 30 days, any impacted tenant shall be a third party beneficiary with standing to enforce the terms of this Covenant against such Owner.~~
9. Enforcement Actions. This Covenant may be specifically enforced against the then-current Owner(s) of the Below-Market Rent Commercial Space. Venue for such action shall be proper in Boulder County. Enforcement actions may include, without limitation, repayment of overcharges to tenants or lawsuit for actual damages. Notwithstanding the foregoing, the City shall take no enforcement action against Owner in connection with any Below-Market Rate Rent lease for which Owner has delivered to the City an executed Eligibility Estoppel Certificate from such tenant. Notwithstanding anything to the contrary in this Covenant or at law or in equity, in no event shall Owner be liable for consequential, punitive, special, incidental, lost profits, or other damages, except actual damages, for any violation of this Covenant, and all such remedies are hereby waived.
10. Indemnification. The then-current Owner(s) of the Below-Market Rent Commercial Space shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities alleged by third-parties and incurred as a result of such Owner's ~~actions or failures to act in connection with~~ violation of this Covenant or the gross negligence or intentional misconduct of such Owner or its agents or employees in the performance of the Owner's obligations under this Covenant, and as part of such indemnification obligation shall pay all costs and reasonable attorney's fees, if any, incurred by the City as a result of any such claims or suits; provided, however, that the Owner shall not be required to indemnify the City from any losses, claims, suits, judgments or liabilities arising from the ~~gross negligence or~~ intentional misconduct, or illegal or unconstitutional acts of the City or its agents or employees. ~~The time of attorneys and legal assistants in the Boulder City Attorney's Office spent on any such claims or suits shall be paid for in accordance with generally prevailing attorney's fees charged in Boulder County for similar services or the actions or inactions of any tenants.~~
11. The Owner(s) of the Below-Market Rent Commercial Space shall maintain (or cause the tenants to maintain) such space in a manner comparable to similar commercial space in the City of Boulder.
12. The Owner shall only permit the Below-Market Rent Commercial Space to be used in compliance with all applicable laws and regulations of the United States, State of Colorado and City of Boulder.
13. ~~12. Annually,~~ Either the City or Owner ~~shall submit a,~~ by written ~~report~~ notice to the ~~City with the following information for~~ other party, but not more than once in any 12-month period, may request a meeting with the other party to review in good faith the leasing performance of the Below-Market Rent Commercial Space: (including

without limitation, vacancy rates, rental rates, and other relevant leasing information) and the terms and conditions of this Covenant, in which event the two parties shall meet to discuss the same within 30 days after delivery of such notice.

- ~~a. Rent roll including tenant names, Below Market Rate Rent commercial unit square footage, rents charged, remaining lease terms;~~
- ~~b. Summary of leasing activity including lease renewals and turnover;~~
- ~~c. Projected leasing activity for the next year; and~~
- ~~d. Acknowledgment of the requirements for leasing the Property.~~

14. ~~13.~~ If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, to the extent that the original intent of this Covenant can still be effected, the remaining provisions shall survive, and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

15. ~~14.~~ Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.

16. ~~15.~~ The Owner hereby acknowledges, affirmatively states, and agrees that this Covenant is a bargained for deed restriction that limits commercial rent on the Below-Market Rent Commercial Space of the Property in accordance with the terms and conditions herein.

17. ~~16.~~ By mutual written agreement, the parties may make changes or exceptions to the terms of this Covenant.

18. ~~17.~~ This Covenant shall run with the land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Covenant shall be unlawful or void for violation of:

- a. the rule against perpetuities or some other analogous statutory provision;
- b. the rule restricting restraints on alienation; or
- c. any other statutory or common law rules imposing like or similar time limits,

then such provision shall continue only for the period of the lives of current duly elected and seated Boulder City Council members, their now living descendants, if any, and the survivor of them, plus 21 years, or until the Termination Date, whichever is earlier in time.

19. ~~18.~~ Any buyer or transferee of the Below-Market Rent Commercial Space of the Property or of any portion thereof or interest therein, by acceptance of a deed therefor, ~~or by the signing of a contract or agreement to purchase the same,~~ shall, by

acceptance of such deed ~~or by the signing of such contract or agreement,~~ be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

20. Term. This Covenant shall continue to run with the land and burden the Property into perpetuity unless and until (a) the improvements on the Property approved in the Site Review Amendment to the Twenty Ninth Street Shopping Center under File No. LUR2018-00075 are redeveloped, adaptively reused, or repurposed, (b) the primary use of the building containing the Below-Market Rent Commercial Space is no longer general office use, (c) a casualty or condemnation (or transaction in lieu of a condemnation) destroys or takes a material portion of the improvements on the Property, or (d) the properties that are immediately adjacent to the Property to the west, south, and east are no longer used primarily for retail or restaurant uses or for parking for adjacent retail or restaurant uses (each, a "Termination Event"). Upon the occurrence of a Termination Event, this Covenant shall automatically and forever terminate and be of no force or effect, without need for any notice or further action of the Owner, City, or any other person or party, effective on the date of such Termination Event ("Termination Date"). Without affecting the self-effectuating provisions of the immediately preceding sentence, in the event of a Termination Event, the Owner shall send the City written notice of the same, and if the Owner requests that the City execute a written termination of this Covenant, then the City shall execute the same and deliver the executed termination to the Owner within 30 days after receipt of such request for Owner to record in the real property records for the Property.

21. Notices. Any notice or other communication provided for or permitted by this Covenant to be made or accepted by either party must be in writing and shall be given or served by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested; by depositing the same with a nationally-known overnight courier service to such party; by hand delivering the same to such party, or an agent of such party; or by sending an e-mail to such party followed by a hard copy notice delivered on or before the next business day pursuant to one of the foregoing other methods of delivery, all to the applicable addresses set forth below. Notice deposited in the mail shall be deemed received two (2) business days after such deposit and notice given in any other manner shall be deemed delivered when actually sent for delivery to the party to be notified. The parties shall have the right from time to time to change their respective contact information as stated below by written notice to the other party.

To Owner:

With copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Charlie Smith
Email: cjsmith@bhfs.com

To the City:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Manager, Chris Meschuk
Email: meschukc@bouldercolorado.gov

With copy to:

City of Boulder
1777 Broadway
Boulder, CO 80302
Attn: City Attorney, Tom Carr
Email: carrt@bouldercolorado.gov

(signature page follows)

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the Effective Date.

Owner:

~~Morgan Creek Ventures, LLC~~

By: _____

Andrew W. Bush
Manager

~~STATE OF COLORADO~~ _____)

) ss.

~~COUNTY OF BOULDER~~ _____)

Owner:

MACY'S RETAIL HOLDINGS, LLC,
an Ohio limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, ~~2019~~2021, by ~~Andrew W. Bush~~ _____, as ~~Manager~~ _____ of ~~Morgan Creek Ventures, LLC~~MACY'S CALIFORNIA, LLC, an Ohio limited liability company.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

[SEAL]

Notary Public

~~City:~~

~~CITY OF BOULDER~~

~~By: _____~~

~~Jane Brautigam, City Manager~~

~~ATTEST:~~

~~City Clerk~~

~~STATE OF COLORADO _____)~~

~~) ss.~~

~~COUNTY OF BOULDER _____)~~

~~City:~~

~~CITY OF BOULDER~~

~~By: _____~~

~~Chris Meschuk, Interim City Manager~~

~~ATTEST:~~

~~City Clerk~~

~~STATE OF COLORADO _____)~~

~~) ss.~~

~~COUNTY OF BOULDER _____)~~

The foregoing instrument was acknowledged before me, this _____ day of _____, ~~2019~~2021, a Notary Public in and for the County of Boulder, State of Colorado, by ~~Jane Brautigam~~Chris Meschuk, ~~Interim~~ City Manager of the City of Boulder.

~~WITNESS my hand and official seal.~~

~~Notary Public~~

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

Exhibit A
Property Legal Description

LOT 5, NINTH STREET, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 2005, IN FILE P-63, NO.'S 18 THROUGH 24, UNDER RECEPTION NO. 2673341, COUNTY OF BOULDER, STATE OF COLORADO.

Document comparison by Workshare 10.0 on Thursday, January 14, 2021
11:19:27 AM

Input:	
Document 1 ID	iManage://dm.bhfs.com/ACTIVE/19913721/1
Description	#19913721v1<dm.bhfs.com> - Macy's - Affordable Commercial Covenant [City Form]
Document 2 ID	file:///C:/Users/cjsmith/AppData/Roaming/iManage/Work/Recent/Macy's_ Inc. - Due Diligence - Redevelopment of Boulder (060305-0001)/Macy's - Affordable Commercial Covenant _BHFS 01.14.21_(19913721.11).docx
Description	Macy's - Affordable Commercial Covenant _BHFS 01.14.21_(19913721.11)
Rendering set	BHFS Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	159
Moved from	1
Moved to	1
Style changes	0
Format changes	0

Total changes	370
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To: City Council, City of Boulder

From: Jessica Fraser, Development Director, Macy's Inc.

Date: January 14, 2021

Re: The Affordable Commercial Rent Covenant for Macy's Redevelopment at
Twenty Ninth Street, Boulder, CO

First, we thank you for your time and for your approval of our Site Review Amendment with a Height Modification at the hearing on January 5, 2021. We are excited about the next steps to get this project through Tech Docs and commence construction.

To that end, we have worked with the City Attorney's Office to negotiate two covenants that will be recorded against the subject property, in fulfillment of our commitments during the last Council hearing. Below is a brief explanation of each covenant.

Voluntary Linkage Fee Covenant

In the last Council hearing, we volunteered to pay the "full" affordable housing commercial linkage fee that is due in accordance with Section 8-9-3 of the Code without any credit for the existing use in accordance with Section 8-9-3(c)(1)(c) of the Code. In keeping with our commitment, we negotiated a covenant with the City Attorney's Office that requires Macy's to pay an amount equal to \$3,022,400 as a voluntary payment to the City. This voluntary payment is in excess of the required linkage fee, which will be calculated and paid as provided in the Code.

Affordable Commercial Rent Covenant

In the last Council hearing, we also volunteered to impose a covenant on the property that would preserve 7,500 square feet of retail/restaurant space as affordable commercial space, meaning that we would charge no more than 80% of market rent for that space. To streamline negotiations, we offered to use the form of covenant that the City had used on the recent Pollard project as the starting point or precedent document for our covenant. As explained in the

hearing, because the Pollard covenant related to office space and this covenant will relate to retail/restaurant space, the Pollard form would need to be adjusted to accommodate the differences between the office and retail/restaurant uses. Therefore, we have provided the below brief explanations of the material changes to the Pollard form that we negotiated with the City Attorney's Office (with support from Community Vitality), to help Council understand the context that necessitated these changes.

Below-Market Rate Rent: In the Pollard covenant, the landlord was allowed to charge up to 85% of Market Rent. In contrast, we agreed to charge up to 80% of Market Rent. In both covenants, this limitation applies to base rent, and commonly charged operating expenses (often referred to a "CAM" or "Operating Expenses") will be assessed in addition to base rent.

Franchises: Because the Pollard covenant dealt with office leases, it did not have to address the concept of franchises. We have clarified that franchises should be allowed, so long as the franchisee qualifies as an Eligible tenant. While people commonly think of major national franchisors, most franchises are actually small local businesses, such as clothing, handbag, arts and crafts, jewelry, or make-up companies.

"Small" Businesses: The Pollard covenant measured whether a potential tenant was a "Small" business based on its gross revenue, which made sense in an office context. However, applying a one-size-fits-all gross revenue limit to a wide range of retailers and restaurants wouldn't be fair or effective. For example, even a small family-owned ethnic restaurant may generate much higher gross revenue than a women's clothing store of comparable size. It would be impossible to assign a meaningful gross revenue figure to every type of possible retail or restaurant tenant. A more commonly accepted measurement of size and success in the retail and restaurant world is the number of locations. Therefore, we said a business is "Small" if it has seven or fewer locations. This still allows for a tenant to grow and expand, including to small pop-up locations, without risk of being kicked out of the project, and it seemed like a fair measurement of when a tenant is truly becoming more of a regional presence than a local one.

Accommodations for a Market-Hall: A marketplace or market-hall is a unique type of retail that often relies on an intermediary tenant who will lease the entire space as the operator and then sublease or license small units to the end-user purveyors. Therefore, we included provisions in the covenant to allow for the lease to the intermediary operator and the subleases or licenses to the end-users. The intent of the deal is to allow for the end-user purveyors to enjoy the benefits of Below-Market Rate Rent without hamstringing our ability to find a quality intermediary tenant and operator. For instance, if a local chef was interested in curating the entire space as a market-hall, the covenant would allow us to lease the space to him/her regardless of whether he/she is an Eligible tenant so long as the chef then subleased or licensed the space to end-user purveyors who are Eligible and at Below-Market Rate Rent, which would be a requirement in the chef's lease. The end-result is a curate marketplace with a quality operator that is filled with Eligible subtenants.

Non-Eligible Tenants: Vacant space is a worst-case scenario and not something anyone wants. Therefore, the Pollard covenant allowed the landlord to lease to a non-Eligible tenant if no Eligible tenant leased the Below-Market Rent Commercial Space after 60 days of marketing. The covenant did not contain any express obligation to market the space to Eligible tenants using any standard of performance. We have agreed to increase this minimum marketing period to 120 days and to engage in commercially reasonable leasing practices, including without limitation hiring a commercial real estate broker, in an offer of good faith to comply with the covenant's intent.

Term of Leases: The Pollard agreement contained minimum and maximum terms for the leases of the Below-Market Rent Commercial Space. This made sense in an office context because the buildout for an office tenant is relatively inexpensive, consisting mostly of delivering a vacant white box. In contrast, the buildout for a specialized retailer or restaurant can be very expensive for both the tenant and the landlord. Therefore, limiting the term of the lease would preclude us from leasing to many great retail and restaurant tenants because the costs of their substantial tenant improvements, fixtures, and equipment could not be affordably amortized over a short term. That said, we did agree to a maximum term of 10 years for any non-Eligible tenant. In the possible, though unlikely, scenario where we can't find any Eligible tenants after 120 days of good faith marketing, we could lease to a non-Eligible tenant, but only for an initial term of up to 10 years. While on the low end for a typical commercial retail lease (which are typically 10-25 years), this term allows us to attract quality tenants to fill the space and avoid long-term vacancies, which would be disastrous to the project and also to 29th Street Mall and certainly not in the City's interest, while also requiring us to re-enter the market when that lease expires to find an Eligible tenant. Anything less than 10 years would scare off nearly all quality retail tenants, who wouldn't be willing to invest in the space for a short-term lease, resulting in protracted vacancies.

Term of the Covenant. This covenant will run with the land and burden the property into perpetuity. The Pollard covenant did not have an express term. We have provided for some instances where the covenant would terminate, such as the redevelopment of the project, a major casualty, or if the primary use of the project or surrounding properties changes. This provides the City with assurances that the covenant will remain in place for the entire useful life of the project that it approved in the Site Review Amendment.



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Second reading and consideration of a motion to adopt Ordinance 8441 amending Section 2-3-2 “Arts Commission,” B.R.C. 1981, to implement the voter approved changes presented in Ordinance 8405 to increase the size of the arts commission to seven members; and setting forth related details.

PRIMARY STAFF CONTACT

Tom Carr, City Attorney, 303.441.3020; Janet Michels, Senior Assistant City Attorney, 303.441.3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to adopt Ordinance 8441 amending Section 2-3-2 “Arts Commission,” B.R.C. 1981, to implement the voter approved changes presented in Ordinance 8405 to increase the size of the arts commission to seven members; and setting forth related details.

ATTACHMENTS:

Description

- ▣ **Item 3D - 2nd Rdg Ord 8441 Boulder Arts Commission**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 19, 2021

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8441 amending Section 2-3-2, "Arts Commission," B.R.C. 1981, implementing a ballot measure adopted by the voters at the November 2020 election to add Sections 135 and 136 to the City Charter increasing the number of members of the Arts Commission to seven and provide for appointment, terms of office and address vacancies and establishing a quorum; and setting forth related details.

PRESENTERS

Chris Meschuk, Interim City Manager
Thomas A. Carr, City Attorney
David Farnan, Library/Arts Director

EXECUTIVE SUMMARY

On November 3, 2020, the voters passed Ballot Measure 2F, which added Sections 135 and 136 to the City Charter increasing the number of members of the Arts Commission to seven and provide for appointment, terms of office and address vacancies. Ordinance 8405 provided for council to adopt any necessary amendments to the Boulder Revised Code to implement this Charter change. Accordingly, this ordinance effects the changes to apply to the March 2021 board and commission appointments and thereafter.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8441 amending Section 2-3-2, “Arts Commission,” B.R.C. 1981, implementing a ballot measure adopted by the voters at the November 2020 election to increase the number of members of the Arts Commission to seven and provide for appointment, terms of office and address vacancies and establishing a quorum; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Arts are an important part of the city’s economy. Effective, efficient, and fair distribution of funding will help to support this portion of the city’s economy.
- Environmental – None identified.
- Social – Arts provide incalculable benefits to society.

OTHER IMPACTS

- Fiscal – None identified.
- Staff time – There may be a marginal increase in staff time required to support the Arts Commission.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

Ballot Measure 2F passed with 46,257 (84.84%) voting in favor and 8,268 (15.16%) voting against.

ANALYSIS

Over the last few years, the city council has increase arts funding substantially. The Boulder Arts Commission is charged with the duty of funding arts in the community in a fair and equitable manner while encouraging and supporting a diverse arts community. This work requires a substantial time commitment from arts commission members, who work as unpaid volunteers. In its 2020 message to the city council, the Arts Commission asked council to consider increasing the size of the commission from five members to

seven members to better distribute the increased workload. Section 130 of the Boulder Charter limits the size of boards and commissions to five members.

The proposed ordinance would increase the size of the Arts Commission to seven members. The proposal would provide that in March 2021, in addition to any appointments to fill vacancies or expired five-year terms, the council will appoint two additional members. One new member shall be appointed to a five-year term and one new member shall be appointed to a three-year term. The appointments, not considering early resignations or expiring terms, would be as follows:

2021: Two

2022: One

2023: One

2024: Two

2025: One

2026: Two

The proposed ordinance would provide that council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence. The proposed ordinance would also provide that council shall fill all vacancies. The proposed ordinance would also set the quorum for the Arts Commission at four and require that a majority of those present vote affirmatively for the board to take action. This approach is consistent with the Housing Advisory Board, but differs slightly from the Planning Board, which is required to have an affirmative vote of at least four to act.

ATTACHMENT

Attachment A – Proposed Ordinance 8441

ORDINANCE 8441

AN ORDINANCE AMENDING SECTION 2-3-2 “ARTS COMMISSION,” B.R.C. 1981, TO IMPLEMENT THE VOTER APPROVED CHANGES PRESENTED IN ORDINANCE 8405 TO INCREASE THE SIZE OF THE ARTS COMMISSION TO SEVEN MEMBERS AND PROVIDE FOR APPOINTMENT, TERMS OF OFFICE, ADDRESS VACANCIES AND ESTABLISH A QUORUM; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 2-3-2, “Arts Commission,” B.R.C. 1981, is amended to read as follows:

(a) The City of Boulder Arts Commission consists of ~~five~~ seven members appointed by the city council for five-year staggered terms, all of whom are city residents. In March 2021, all existing members are appointed to continue their existing terms. In addition to any appointments to fill vacancies or expired terms, the council shall appoint two additional members. One new member shall be appointed to a five-year term and one new member shall be appointed to a three-year term. The council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence. The council shall fill all vacancies.

(b) The commission’s functions include, without limitation:

...

(c) The commission is not authorized to issue subpoenas.

(d) Four members of the board constitute a quorum. An affirmative vote of a majority of members present shall be necessary to authorize any action of the board.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 5th day of January 2021.

Sam Weaver, Mayor

Attest:

Elesha Johnson, City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 19th day of January
2021.

Sam Weaver, Mayor

Attest:

Elesha Johnson, City Clerk



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Maintaining Safe and Welcoming Public Spaces Update

PRIMARY STAFF CONTACT

Chief Maris Herold/Kurt Firnhaber

ATTACHMENTS:

Description

- ▣ **Item 6A - Maintaining Safe and Welcoming Public Spaces Update**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 19, 2021

AGENDA TITLE

Maintaining Safe and Welcoming Public Spaces Update

PRESENTER/S

Chris Meschuk, Interim City Manager
Kurt Firnhaber, Director, Housing and Human Services
Maris Herold, Chief of Police
Alison Rhodes, Director, Parks and Recreation
Chris Reynolds, Assistant City Attorney

EXECUTIVE SUMMARY

Encampments on public lands continue to be a concern in the Boulder community, particularly as the COVID-19 pandemic creates additional challenges. Since early 2020 and as directed by City Council, an interdepartmental task force has worked to develop and implement a strategy for the safe, legally defensible and compassionate closure of encampments in public spaces.

The issue of encampments is a nationwide one, and Boulder's encampment strategy draws upon best practices. It aims to reduce encampments and associated unsafe conditions in the city, to keep individuals out of floodways, drainage way and high hazard zones and to address hazardous materials in public parks and playgrounds while also helping people experiencing homelessness to find solutions consistent with the City of Boulder Homelessness Strategy. Despite these efforts and significant resources spent, the challenge has not been resolved, and in some ways, it has worsened. The community has expressed significant concern through a high volume of correspondence in the council email inbox and reports to Inquire Boulder, the city's online customer service

platform. As council is aware, there is a diversity of viewpoints about the city's approach to encampments.

The intent of this agenda item is to provide an update on 2020 efforts, and:

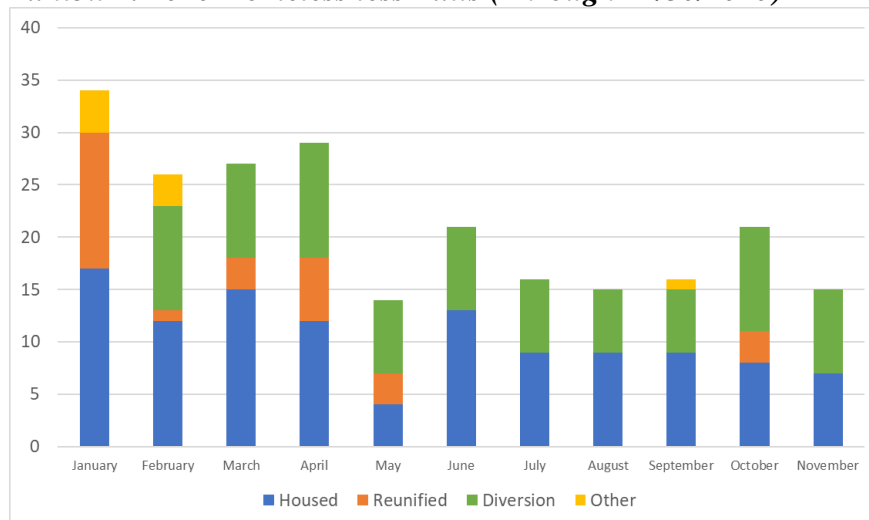
- Confirm City Council direction for addressing encampments and
- Request City Council input on potential 2021 adjustments to the approach. Staff recommendations include:
 1. Additional Enforcement
 - 1A. Staff Additional Police Unit
 - 2A. Establish Urban Park Rangers
 2. Environmental Improvements
 - 2A. Establish Internal City Clean-up Team
 - 2B. Crime Prevention Through Environmental Design (CPTED)
 3. Creation of Residential Treatment Living Options for Meth Users
 4. Adjustment to Boulder's Camping Laws

BACKGROUND

Homelessness Services Summary

Homelessness services in Boulder County through coordinated through Homeless Solutions for Boulder County (HSBC). Since the implementation of HSBC, over 1,000 individuals have been provided an exit from homelessness. Programs have different eligibility requirements and provide targeted resources based on different needs. Information about the various programs and the City of Boulder's [Homelessness Strategy](#) can be found on the City's Homelessness [webpage](#). Further information about Coordinated Entry (CE) and homelessness service exits can be found on the [Single Adult Homelessness Dashboard](#). Additional sheltering is provided through Severe Weather Shelter (SWS) during the winter months. Information related to shelter capacity and SWS can be found on the [Severe Weather Shelter Dashboard](#).

Exhibit 1: 2020 Homelessness Exits (Through 11/30/2020)



This graph shows that 234 people exited homelessness during the first 11 months of 2020. Exits are shown by type and month.

Engagement with people experiencing unsheltered homelessness is a priority for the homelessness response system. As part of that effort, the Homeless Outreach Team (HOT) within the Police Department, the Municipal Court Navigators and other community outreach workers from Boulder Shelter for the Homeless (BSH) have worked to ensure these relationships are built. In late 2020, the Boulder Targeted Homeless Engagement and Referral Effort (BTHERE) was added to help address this effort.

Existing resources cannot provide all services to all people experiencing homelessness in Boulder. The more intensive services and programs are focused on residents who have been a part of the Boulder County community. People who have been in Boulder County for fewer than six months – an estimated two-thirds of those in encampments – have Diversion Services and SWS available to them. Since SWS opened this season on October 1st, there has been an average of 32 unused beds each night.

While the homelessness services system is broad and continues to evolve, information provided in this memo is focused primarily on the city's encampment response, rather than a discussion of the overarching homelessness strategy. Over the past three years, the majority of individuals experiencing homelessness in the community have engaged with outreach efforts and with various service providers to address both immediate needs and underlying challenges. Some people experiencing homelessness choose not to engage in services, are unable to engage, or require assistance beyond what is provided by the system. These are the people who are residing in encampments in Boulder and we are focused on within this memo.

Shelter Suspensions

A frequent reason cited for people residing in encampments is that a large number of them have been suspended from BSH. While there are roughly 30 individuals who are suspended at any point from BSH, only a portion of these individuals remain in the community. Many of the people who receive suspensions are traveling through the community, recognize that their options for services and sheltering have become limited, and choose to move to other locations once they are no longer able to stay at the shelter. Thus, suspensions from the shelter result in a small percentage of those camping in the community. While many will not remain in the community following suspension, outreach workers continue to foster engagement and to help people identify what options are available. Most suspensions range in length from a night to several weeks or up to a year for serious, violent or multiple infractions.

Encampments and Public Lands

In Boulder, as in cities across the country, public lands are increasingly becoming sites for camping by the unhoused. Boulder's urban parks and open spaces are intended to be welcoming and safe spaces for all members of the community and visitors, and it is increasingly difficult to maintain an atmosphere that is safe and welcoming for all under these conditions. As outlined below, camping on public lands in Boulder is illegal and results in unsafe conditions for those camping and for others. In addition, the need to address the impacts of encampments is absorbing an increasing number of resources (labor and money).

The Boulder Parks and Recreation (BPR) 2016 General Maintenance and Management Plan demonstrated that staffing levels at that time were barely adequate to support established maintenance standards related to turf care, trash removal, horticulture, graffiti abatement, weather response, irrigation, playgrounds, and other facility maintenance (shelters, fences, lighting, etc.). At that time, labor attributed to vandalism, encampments and graffiti totaled just under one Full Time Equivalent (FTE) at 1,690 labor hours. In 2020, this has increased with staff estimate spending an estimated 970 labor hours providing clean-up related to encampments (this does not include management time spent coordinating encampment strategy) and an additional 1,560 labor hours related to vandalism/graffiti. As a result, preventative and responsive maintenance on horticulture, irrigation and landscape maintenance has been deferred by up to 20 percent.

Similarly, encampments in drainageways, along greenways and bike paths create impacts in spaces managed by Public Works. Over the past three years, Public Works Utilities maintenance staff have spent 4,000 hours and \$246,000 on encampment clean-up activities in flood and stormwater structures and greenways. These activities divert approximately 17% of resources from other critical needs such as repairs and maintenance of flood and stormwater infrastructure, path maintenance, and weed control and turf management of greenways. In addition, encampments in stormwater and flood control infrastructure, such as culverts and in some cases, underpasses, threaten the safety of individuals located in these structures as well as the ability of the infrastructure to efficiently convey stormwater and mitigate against flooding. Encampments near creeks and ditches can impact surface water quality due to trash, including human waste, potentially impacting the safety of recreators.

In 2020, Transportation maintenance employees spent 730 hours and \$40,000 on encampment clean-up activities (data related to encampment clean-ups in 2018 and 2019 were combined with Utilities). These activities divert approximately 11% of resources from other critical needs such as repairs and path maintenance, weed control and turf management. In addition, encampments along public transportation infrastructure, such as underpasses and medians, threaten the safety of individuals located in these areas as well as impacting the safety of commuters and recreators.

Open space lands are also impacted by encampments. As happens most summers, the summer of 2020 included greater impact of larger encampments on Open Space and Mountain Parks (OSMP) properties, both east and west of town. Similarly, more of the outlying industrial areas are seeing more encampments. OSMP estimates indicate between 30-40 individuals camping on OSMP at any one time with a great deal of seasonal variation. OSMP citation numbers and contacts follow a bell curve range between 1 and 18 contacts at a different campsite per month seasonally.

Finally, there are other impacts as staff attempt to balance the tensions in providing safe public spaces. Staff recognize that encampments are a symptom of much larger and upstream nationwide challenges; however, staff regularly report being harassed both verbally and physically by those camping in urban parks and increasingly this year, by protestors and/or activists. In each of the last two years, an employee has been criminally

assaulted by a person experiencing homelessness in the park while attempting to perform regular maintenance responsibilities. Clearly, this is an untenable situation.

Camping on Public Lands: The Process and the Law

The Boulder Revised Code prohibits anyone from camping “within any park, parkway, recreation area, open space, or other city property.” § 5-6-10, B.R.C. 1981. Camping is defined as “to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place.” Camping does not include napping during the day or picnicking. In addition, a city manager rule prohibits anyone from remaining in any park from 11 p.m. until 5 a.m. Both provisions are enforceable by criminal charges, with a maximum \$1000 fine and 90 days in jail.

Most of the defendants charged with camping are indigent. No fine would be enforceable. Jail is not currently an option because the facility’s capacity has been reduced due to COVID-19. Even when jail is available, Boulder’s court and prosecutors look for options that address the underlying issues of addiction and mental illness, which drive much of the criminal behavior. Nevertheless, the threat of jail can be an incentive for defendants to accept services that can assist them. City prosecutors, the police department’s homeless outreach team and the municipal court navigators work together to address the needs of defendants. Typical solutions range from helping a defendant get identification, reconnecting with social security disability, and ultimately, accessing permanent housing. While jail does not solve problems, the absence of a jail option makes it harder to persuade defendants to engage with the available services.

An even more challenging issue is the level of drug addiction among many of the unhoused defendants in the system. The Boulder community, like the nation, is seeing the effects of the opioid epidemic. There are insufficient treatment resources for the level of opioid addiction that is present in Boulder, and virtually no treatment available for those addicted to meth, which is arguably a larger proportion of unhoused defendants with addiction issues. While the criminal justice system can play an important role in addressing this problem, it is not the solution. The solution is a significant increase in treatment resources.

CURRENT STRATEGY: OVERVIEW, RESOURCES AND OUTCOMES

To reduce encampments and unsafe behavior in Boulder public spaces, and following consensus at the January 2020 City Council retreat, a multi-disciplinary team of employees from Housing and Human Services (HHS), Public Works – Utilities, Transportation & Mobility, Parks and Recreation, the City Attorney’s Office and Boulder Police Department (BPD) has worked collaboratively to define and implement a coordinated strategy. Other departments, such as Community Vitality and Open Space and Mountain Parks, have also assisted. This strategy strives to send a consistent message that encampments are not acceptable by working to prevent new encampments from forming and disbanding existing encampments as quickly as possible while establishing social norms for public spaces to reduce threatening and unsafe behavior.

The current strategy includes three coordinated approaches, and a summary of each is outlined below.

- 1) Camping Ordinance Enforcement and Clean Up
 - The current process includes 72-hour notice to vacate, allowing individuals camping the opportunity to gather their belongings. Outreach is provided before notification and in the timeframe before the camping ban is enforced.
 - When the camping ban is enforced, any abandoned property is stored for up to 60 days (if not contaminated by hazardous materials such as meth or human waste).
 - In 2020, nearly 250 encampments of varying sizes were cleaned. Evidence of hazardous materials (drugs, human waste, propane tanks) was documented at nearly 80% of the encampments cleaned.
 - In 2020 contracted hazardous cleaning expenses exceed \$170,000.
- 2) Establishment of BTHRE (Boulder Targeted Homelessness Engagement and Referral Effort)
 - Piloted program began Sept. 10, 2020 with an abbreviated schedule and an ad-hoc team to build relationships with individuals experiencing homelessness and help guide them to appropriate services.
 - Current field staff has an average 83 interactions per week, with an average of 21 referrals to Coordinated Entry per week
 - Full staffing and schedule to begin in late January 2021.
- 3) Ongoing efforts to obtain permanent housing.
 - Boulder provided over 1,000 housing opportunities between October 2017 and December 2020.
 - The [Single Adult Homelessness Dashboard](#) provides information related to Coordinated Entry and exits from homelessness.

CHALLENGES

COVID-19

There are several factors that have contributed to and have made addressing encampments more difficult because of COVID-19.

COVID-19 has changed the way that sheltering and services are provided to the community. In many surrounding communities, the response was not put into place as quickly as it was in Boulder. During the first few months of the pandemic, Boulder saw a dramatic increase in the number of chronically homeless individuals coming from Denver. Anecdotal information provided to HOT and other providers suggested individuals were afraid of Denver shelters and wanted to move to a less-populated space. This increase in individuals from Denver and surrounding communities has continued through 2020.

Some individuals cite the pandemic as a reason for not engaging in shelter options at BSH. In these cases, they are advised of the shelter's excellent track record in controlling COVID-19 and protecting its most vulnerable clients.

Case management services, and particularly mental health services, have drastically changed during the pandemic. While the community continues to discover ways in which to provide services in a changing landscape, the inability to provide in-person counseling, severe limitations to substance use disorder assistance, and controlled access to mental health services have led to deterioration of support for some people experiencing homelessness.

Due to COVID-19 restrictions, officers are unable to arrest offenders on non-violent misdemeanors, municipal ordinance violations, and many felonies, which greatly hampers enforcement. Therefore, the only available enforcement mechanism for municipal violations is issuing a summons for the violator to appear in court. If violators fail to appear in court, which is common, current jail protocols prevent the arrest of these individuals on Failure to Appear (FTA) warrants.

As mentioned previously, there are reduced census levels at the jail. Some of these reductions have led to the release of several low-risk individuals and a moratorium on jail arrests and sentences for certain low-level offenses, making enforcement of the camping ban and other offenses associated with encampments difficult to conduct. While the Municipal Court is currently hearing cases, there was a 7-week period during March and April in which no in-person cases were heard.

Another contributing factor is the lack of use by others and activation in the parks. Positive activity is a known deterrent and crime prevention strategy in urban parks, and generally, the city programs uses such as events, concerts, and other community gatherings to encourage a thriving environment in these public spaces. Due to limits on public gathering, this strategy is not currently available.

In addition, activist groups have encouraged camping by providing free tents and other camping equipment. Activists also increase risk of fires starting, burning out of control, and/or resulting in the injury or death of the encampment inhabitants through donated cooking and heating devices used unsafely in tents. Encouraging camping places vulnerable individuals at risk. Camping during a Colorado winter requires a level of skill and preparation beyond that of the average unhoused individual. In many of the encampment areas, individuals resist involvement with the service framework because they have a tent or a “good sleeping bag.” HSBC has worked to create and continuously improve a range of available alternatives to living on the streets in Boulder. What has been demonstrated through these aid distributions is that the distributions lead to individuals who refuse to engage with the HSBC system of services and support.

Impacts on Police Resources

In order to respond to the increase in calls for service involving unhoused individuals, the police department is currently in a position that requires the redirection of resources and an unsustainable amount of overtime.

In 2020, police officers responded to at least 6,516 calls-for-service involving unhoused individuals, which amounts to more than 9,500 hours of officer time and more than

\$438,520 in salary costs. To put these numbers in perspective, the salary costs equal over 4.5 full time police officers. This represents a 25% increase from 2019 to 2020. On the current trajectory, the numbers are expected to increase in 2021.

To provide additional perspective, in 2020, the monthly average of calls involving unhoused individuals was 543. This number is greater than the average monthly total of both medical calls (531) and officer-initiated traffic stops (527). Further, it is almost five times the average monthly total of officer responses to intrusion alarms (116).

For safety reasons, all calls involving unhoused individuals experiencing mental health issues, drug or alcohol usage, or unpredictable behavior requires a two-officer response. Two-officer response calls negatively impact already minimal staffing levels because the average time spent on these calls is 55 minutes. As police officers dedicate more time to this segment of our community, the trade-off is a decreased level of service to the larger community.

Recently, the police department has experimented with placing additional police officers in Central Park. From Dec. 16, 2020 to current, the police department has spent over \$29,000¹ in overtime to maintain an officer presence 24/7. Multiple attempts are made every day by individuals experiencing homelessness to set up new encampments. This effort is not sustainable or operational under current staffing and budget restrictions. As soon as the additional officer presence is gone, an illegal encampment will reoccupy the area.

Crime

Without a doubt, most individuals experiencing homelessness are law-abiding; however, police data reveal there may be some relationship between crime and this challenge in the Boulder community. In 2020, a suspect or suspects were identified in 614 serious offenses, including homicides, assaults, robberies, or burglaries. These 614 criminal incidents were perpetrated by 490 unique offenders, with some offenders committing multiple crimes. Of the 490 unique offenders, 181 (37%) were identified as unhoused.

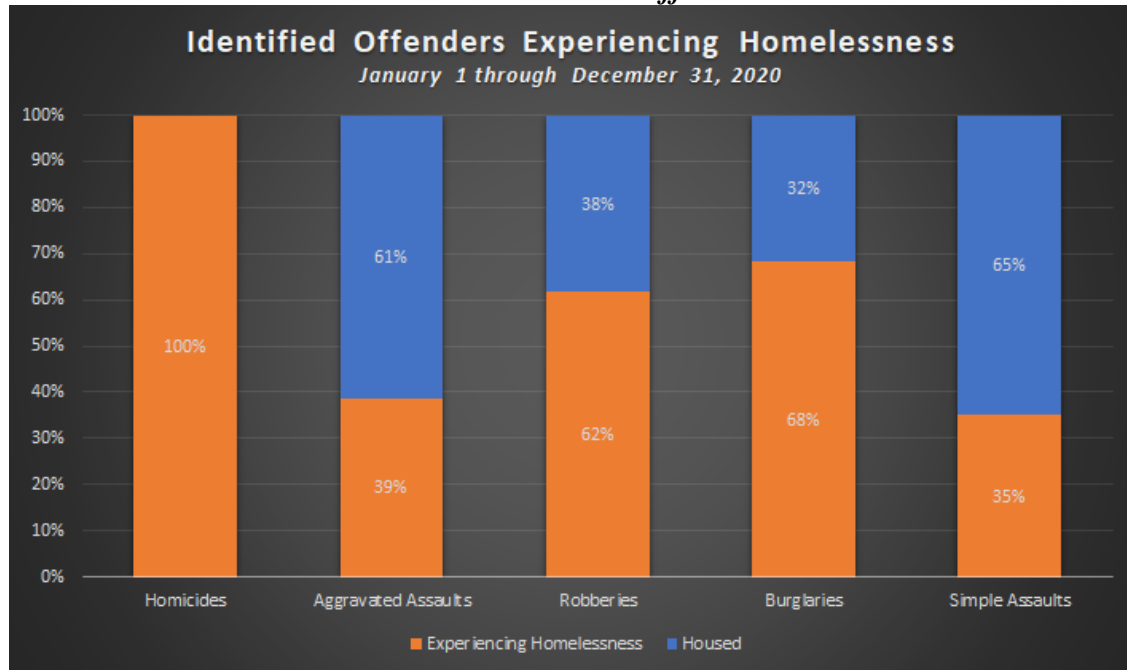
In 2020, police also investigated 39 Felony Menacing incidents where the suspect was identified as unhoused. Felony Menacing usually involves a threat with a weapon.

In one of Boulder's two 2020 homicides, both the decedent and suspect were unhoused. The suspect in the second homicide had recently experienced homelessness. Exhibit 2 depicts the proportion of 2020 housed and unhoused known serious offenders.²

¹ This number was calculated based off current staffing levels. Two police officers on regular duty are currently being re-directed from their normal assignment to patrol this area. Two overtime shifts of 10 hours are currently needed to fill the gap. The median overtime rate for a police officer is \$69.24 per hour.

² This data was obtained through a search of BPD records on 12/29/2020. Year-end reports and final disposition data may differ.

Exhibit 2: 2020 Unhoused and Housed Serious Offenders



In addition, the Boulder community has recently experienced an increase in bike thefts. Bikes are commonly found at encampments. Identification of stolen bikes is very difficult because anecdotally bike theft is under reported in our community.

Exhibit 3: Enforcement conducted by Boulder Police

Violations	2018	2019	2020
Camping (BRC 5-6-10)	378	541	255
Trespassing (BRC 5-4-3, 5-4-5, 5-4-6)	714	707	480
Unlawful Conduct (BRC 5-5-20)	3	2	0
Stolen Propane Tanks (CRS 18-4-401)	1	3	11

Exhibit 3 presents enforcement of violations related to camping, trespassing, unlawful conduct, and stolen propane tanks. 2020 citation numbers are down, but the city believes

this is due to COVID-19-related store closures (where trespassing frequently occurs), jail restrictions, and officer directives to limit close interactions with individuals suspected of misdemeanors to prevent COVID-19 exposure and spread.

Exhibit 4: Enforcement by CU Boulder Police

	Trespassing		Camping		
	Summons/Arrest	Included Offense	Summons/Arrest	Included Offense	Overlap
2018	48	93	20	141	80
2019	35	76	7	98	45
2020	46	86	37	153	95

CUPD has indicated that a random audit was conducted to verify 85%-90% of these occurrences are connected with a person being from our unhoused population. Please note, these statistics are not an absolute and should serve more as an educated guide.

Unhoused Victimization

Over the past year, the use of tents has increased dramatically in Boulder. Tents present challenges to both enforcement and outreach. In the past, officers would approach a person with a backpack, bed roll, food containers and potential drug paraphernalia or an open alcohol container. Presently, officers approach closed tents, with unknown numbers of people refusing to come out or identify themselves. The tents conceal drug use, stolen items, weapons and hazardous materials that were once in plain view. Recent court decisions have classified tents as “homes;” therefore, officers cannot open or enter a tent without a warrant. As such, incidents of domestic violence, sexual assaults, and other crimes are harder to detect and investigate.

Drug Usage

There is an unprecedented amount of meth use within Boulder’s unhoused population. HOT reports that approximately 50 meth users are repeatedly identified during encampment clean-ups. These individuals are disengaged from services and often utilize the free tents and other camping equipment distributed by activist groups. Those who engage in meth use exhibit unpredictable, and sometimes, violent behavior. The uptick in meth use has accompanied the state legislature’s move toward decriminalization of personal use drugs and the reduction of penalties from felonies to misdemeanors.

More recently, HOT has observed individuals who own/possess vehicles engaged in illegal camping. These vehicles, parked close to encampments, can be associated with criminal activity, including burglaries and drug distribution.

Fire Hazards

Evidence of open burning, in violation of [B.R.C. 10-8-2](#), and serious fire-related injuries to unhoused persons is becoming a significant concern.

Items encountered range from camp stoves, to candles, to burning hand sanitizer in cans, to propane heaters and makeshift wood/trash stoves. Officers and other city staff see evidence of open fires, as well as fire damage to tents and other equipment.

Approximately 30 propane tanks were recovered during the removal of the 9th Street encampment site in February 2020. In November and December 2020, city officials recovered an additional 46 propane tanks, some of which had significant fire damage (see Figure 1). During a recent clean-up, officers aided an individual who had a severe leg burn.



Figure 1: Propane tanks from encampments Nov-Dec 2020.



Figure 2: Propane tanks from recent explosion/fire at Valmont City Park.

Firefighters routinely respond to fires at encampments. Last month firefighters responded to a fire underneath the Main Library. One of the camp occupants shared that several tents caught fire, due to wind and open sanitizer fires. Another fire that occurred last month was at an encampment set up in an undeveloped area in Valmont City Park (see Figure 2, 3 and 4). Numerous propane tanks exploded, and an entire tree was engulfed in flames. A resource-intensive investigation followed to determine if fatalities occurred at the scene; other materials present suggest the manufacturing of meth. The camp was vacant at the time and there was no human injury or loss of life.



Figure 3: Valmont City Park propane tank explosion



Figure 4: East Boulder propane tank fire

Biohazards

Encampments contain biohazards that create poor living conditions for the unhoused and threaten public safety. Two common biohazards are human waste and used drug needles. Encampments contain piles and buckets of human waste, requiring certified private contractors to conduct removal. During a recent encampment cleanup, staff and contractors removed approximately 100 used needles (see Figure 5).

There are also piles and/or buckets of human waste at most sites and used syringes. This creates hazardous conditions for clean-up, as well as unsafe living conditions.



Figure 5: Needles collected in > 15 minutes.

Staff and contractors try to address the unsafe conditions with regular trash bag “service” at encampments and provide cleaning even when law enforcement is not addressing violations of the camping ban. For example, on Dec. 28, staff removed 7 cubic yards of trash from the area under the library. On Dec. 30, hazardous materials contractor ServPro removed 12 cubic yards of trash from this same area and filled a three-yard trash receptacle behind the West Age Well Center with contaminated materials. In addition, staff collected approximately 100 needles, 13 propane tanks (in addition to the ~9 removed the week prior), at least 4 shopping carts (theft of grocery carts are costly to local businesses), and miscellaneous trash, bike parts and a makeshift wood stove.

Trash



Figure 6: Children's Park near Main Library

Encampments quickly fill with litter. With more unhoused persons living in tents, campsites are larger, more visible in public spaces, and result in a large volume of trash. As noted above, most of these tents are provided by homeless activist groups. These groups also provide camping supplies, hotel rooms when shelter beds are available (leaving parts of encampments intact), and food deliveries that overlap with already scheduled feeding events, promoting waste. When activists interfere with cleanup efforts, it impacts the work performed by city staff and private contractors who feel targeted and threatened. Abbreviated clean-ups lead to unremoved trash and other hazardous materials, creating health hazards for encampment occupants and the public.

Health and Safety of City Staff

First responders, city staff, social service providers, contractors, and unhoused persons are faced with health concerns associated with encampments. In addition to the hazards created by crime/victimization, fires, litter, and biohazards, encampments present unique health and wellness challenges due to COVID-19, including:

- physical contact between service providers and the unhoused population,
- public fear of proximity to panhandlers,
- limited to no access to daytime locations used by unhoused persons (due to stay-at-home/business closure orders),
- disruption of probation and social services, and
- decrease in jail space.



Figures 7 Municipal Campus

Community Harm

The effect encampments have on our greater community cannot be overlooked. Community fear is real. A number of our community members no longer feel safe recreating on our multi-use trails, parks and in public spaces. Even more disheartening is that some parents no longer feel safe taking their children to our libraries and parks or letting them ride the bus alone to school. Some of our community members that are older adults and/or disabled no longer feel safe moving about our community to access city services. Shopping downtown is another activity that community members love and is vital to our economy. Due to the number of troubling criminal incidents in and around the Pearl Street Mall involving unhoused individuals many community members now spend their money elsewhere.

In 2020, Council received over 700 e-mails about this topic. In Q3 of 2020 community members were directed to report encampments through Inquire Boulder. This was a new process introduced to streamline cross-departmental work and lessen the burden on police dispatchers who were handling complaints. In just over four months 567 reports were submitted by community members. Most reports included complaints about multiple encampments.

EFFORTS IN PROGRESS AND OPPORTUNITIES TO PROVIDE MORE RESOURCES

Recognizing that the current strategy and investments are not achieving adequate results, staff wishes to update council on current efforts that are under way, some of which may have budget impacts.

Boulder Creek Management Plan: In progress

The Parks and Recreation 2021 CIP includes the development of a management plan for the Boulder Creek corridor. In urban environments, it can be challenging to balance resource protection with visitor use and this is true along Boulder Creek. Each year, there are concerns about overcrowding, environmental degradation, trash and other ordinance violations. These issues were exacerbated in the summer of 2020 with the pandemic creating a greater interest in outdoor activities and gatherings. In partnership with other departments, this project will develop a comprehensive restoration and management plan for Boulder Creek to balance recreation and public use with maintaining the stream's ecosystem.

Encampment Coordinator Position: In progress

In December 2020, the city posted a position for a Public Space Reclamation Supervisor. The position will reside in the Public Works – Utilities Department (Utilities) and will oversee the operational function of encampment cleanups. Currently, such work is absorbed by numerous staff across multiple departments whose efforts are redirected from their primary operational roles within their respective departments. The supervisor will supervise field contractors, and coordinate scheduling and prioritization of clean-ups. The position is being established in Utilities as this department typically experiences the most clean-up expenditures of any city department because so many of the encampments occur within flood and drainageways and other Utilities' facilities. The position will support routine maintenance functions within Utilities when not performing encampment abatement. The position and funding was established in Public Works through the budget process in prior years.

Sharps Containers in Urban Parks: In progress

Boulder County Public Health's Works Program provides harm reduction materials and services for people who use drugs in Boulder County. The goals of this programming are to reduce the burden of HIV and viral hepatitis infections and to reduce drug overdose morbidity and mortality in Boulder County, while encouraging referrals into substance use disorder programs. In addition to overdose prevention education and access to Narcan, the program stresses safe disposal of syringe/materials. Weekly street outreach and community syringe litter pick-up are offered in Longmont and Boulder to help support Works Program participants experiencing homelessness, and active referrals for Works Program participants are an important part of services.

The HHS department has been in recent conversations with the Works Program, in partnership with the Boulder Community Health Foundation, for the placement of secure, designated Sharps containers in key locations. These metal containers will be locked and permanently attached to the ground.

- 1) Cost: Funding would be provided by Boulder County Public Health, the Boulder Community Health Foundation, and other grants. City of Boulder commitment would include designating and allowing locations to be used.
- 2) Benefits:
 - Provides safe disposal for syringes to reduce their prevalence in parks or public spaces.
 - Mitigates infectious disease and transmittal via syringes.
- 3) Challenges: A similar approach was piloted in the summer of 2017. Containers identified as vandal-proof were vandalized, with used needles taken. In addition, the containers did not seem to result in improved conditions or fewer needles in public spaces. Mitigation of vandalism risk may include identifying locations that are not isolated, as well as containers that have improved in security design. In addition, some community members have been vocal in opposition to this public health approach.

Positive Activation in the Civic Area

Outdoor activities are anticipated to be in higher demand in 2021 as the coronavirus is still present in the community and herd immunity has not yet been achieved. In alignment with the Civic Area Master Plan, and due to the anticipated needs for outdoor venues, BPR staff are coordinating with partners across the community to prepare this downtown park for arts and cultural events in Spring 2021 and beyond, including a COVID-19 compliant outdoor performance venue, increased outdoor markets, etc.

- 1) Cost: \$10,000 - \$25,000 for infrastructure including venue fencing, temporary restroom facilities, lighting, and signage to allow for efficient space utilization (particularly during COVID-19). Additional long-term activation (in strategic park locations) would be possible with increased funding and resources dedicated to park activation. \$80,000 investment in a park supervisor (like position at Valmont City Park) would allow for even more facilitated activation such as events, vending, concessionaires, commercial interest, etc. A Civic Area Ambassador position had previously been funded to support maintenance and events in this area, however, the position was never filled due to budget constraints.
- 2) Benefits: Community events build social capital, the backbone of strong communities. Fostering the community's health (total physical, mental, and spiritual well-being) is more important than ever as the community recovers from the trauma of the pandemic. Per the Civic Area Master Plan, Activation helps create a ["Welcoming and Safe Place" for "Community Activity and Arts"](#). Activation in similar public spaces across the country has been directly correlated to increased public perception of cleanliness and welcoming. Event, permit, or licensee revenue may be viable once events and partnerships are established.
- 3) Challenges: Continued presence of the pandemic requires agile planning as staff and partners adjust to ever-changing public health guidance. In addition, some partners express hesitancy about programming in this area due to safety concerns related to encampments.

Denver Homelessness Resolution Fund

In May 2019, Denver voters upheld the city’s camping ban, and during the November 2020 election, Denver residents voted to approve a 2.5 cent sales tax per \$10 purchase to be used for expansion of homelessness services. The measure is expected to raise \$37 million in the first year and an additional \$40 million each additional year. The fund is to be used for “proven solutions” that prioritize shelters over unsheltered living and avenues into housing. Taxes are not paid on purchases of groceries, water, or fuel, and the average impact to a Denver household is \$5.25 per month (\$63 annually). Denver currently spends over \$50 million annually (\$90 million including funds spent by nonprofits) on homelessness, and a recent report from Metro Denver Homelessness Initiative (MDHI) shows that between July 1, 2019 and June 30, 2020, there were 31,207 people experiencing homelessness in the greater Denver area (a 5x increase since the prior January Point in Time Homeless Count).

Ultimate goals for the funds include the provision of:

- 1,800 units of supportive housing over 10 years
- 500-600 additional shelter spaces to replace lost shelter resources

Exhibit 5: Year One Funding Allocations

<i>Amount</i>	<i>Purpose</i>
\$9.9 Million	COVID Response, including 800 hotel rooms
\$10.5 Million	Permanent Supportive Housing support
\$8.9 Million	Shelter Services
\$1.5 Million	Innovative Approaches – manufactured housing, tiny homes, expanded outreach, and other service expansions
\$3 Million	Catalytic Housing – Acquire and/or develop 100 housing units of shelter + PSH (similar to Delores Project – 25 PSH units and shelter)
\$2.2 Million	Administration
\$1.1 Million	Reserves

ADDITIONAL INFORMATION REQUESTED BY THE COUNCIL AGENDA COMMITTEE

The Council Agenda Committee requested that staff include the following information:

1. At the request of Council Member Yates, an estimate of the cost of additional signage noting the park closure hours. Such signage would inform individuals that the parks are closed from 11 p.m. to 5 a.m. It would help to support trespass charges. Staff will provide information about existing signage and the cost of additional signage as part of the presentation.
2. At the request of Council Member Yates, a potential amendment to Boulder Revised Code Section 8-3-21, to ban tents and other structures in urban parks. Staff has drafted the following:

8-3-21. - Tents and Nets Prohibited.

No person shall erect any tent, net, or structure on any public property, park, parkway recreation area, open space, street, or public, unless done pursuant to a written permit or contract from the city manager.

3. Mayor Weaver asked whether propane tanks are permitted in parks. There is currently no prohibition relating to propane tanks in parks. Staff has the following potential amendment to Boulder Revised Code Section 5-4-10, which would prohibit propane tanks not attached to a grill:

No person shall start or maintain or cause to be started or maintained any fire on any public property, park, parkway recreation area, open space, street, or public way, unless confined within a fire pit permanently erected by the city for such purpose. No person shall place, erect, build, or construct a fireplace, stove, or other fire container in any public property, park, parkway, recreation area, open space, or public way, except pursuant to a written permit from the city manager. For purposes of this section, public property means property belonging to the city or under the possession and control of the city. No person shall possess a propane tank in any public property, park, parkway recreation area, open space, street, or public way. No person shall possess a propane tank in any public property, park, parkway recreation area, open space, street, or public way, unless such tank is affixed to a grill or other device intended for the preparation of food or unless done pursuant to a written permit or contract from the city manager

RECOMENDATIONS

To enhance effectiveness and provide options that might enhance the strategy Council's input on the options is requested, and those selected will be researched for a more detailed cost analysis and implementation strategy – including a trade-off analysis for services that would need to be discontinued to provide additional resources to address encampments.

The interdepartmental task force made up of HHS, Public Works – Utilities, Transportation & Mobility, Parks and Recreation, the City Attorney's Office and Police have been most directly working with challenges of maintaining public areas and enforcement of the camping ban. This team has identified four different recommendations to improve the effectiveness of this work and would like to receive input from City Council. Some of these recommendations will require further analysis to better understand the scope, impacts and budget implications (including identifying trade-offs to allow for funding).

1. Additional Enforcement

1A. Staff an Additional Police Unit³

- Cost: \$771,888⁴ annually for six full time police officers. An additional start-up cost of \$321,600 in year one and then an ongoing expense of \$48,600 which would include training, uniforms, equipment, and vehicles.
- Benefits: These officers would be stationed in downtown area (Civic Area 9th-13th) to prevent the re-occupation of an illegal encampments.
- Challenges: Increased enforcement of camping violations and other associated violations without increased consequences/jail, court mandated drug treatment, is futile. Additionally, this could push more encampments into other sections of the community. Additional security is an option, but they will rely heavily on police support because they have no arrest/citation authority further burdening police resources.

1B. Establish Urban Park Rangers

Limited commission rangers could focus on code enforcement without involving law enforcement and with a goal of preventing unintended behaviors in urban parks. The Urban Park Rangers would also provide much-needed support to all BPR areas, including parks, natural areas, multi-use paths, sports complexes and various recreation facilities. As visitation to recreation facilities grows, so does the potential for conflicts, both between visitors and with the infrastructure and amenities that serve them. BPD has a limited capacity to respond to non-life safety related events in the urban parks. Simply having a uniformed presence in our parks should induce many members of the public to obey park rules and regulations (e.g., at Eben G. Fine Park and along the creek in the summer). Additionally, if an issue were to arise, the response could be timelier, resulting in better resolution and ultimately an increase in the health and safety throughout the park system.

- Cost: \$70,000 to \$100,000 annually in personnel expense depending on classification of staff hired to the position and including benefits. Non-personnel start-up costs would include training, uniforms, equipment, and a vehicle for an estimated \$76,000. A one-year pilot is proposed and thus NPE costs can be deferred with temporary solutions to support the pilot.
- Benefits: A major component of a Ranger position is positive, proactive engagement with the public to provide information on management policies and recreation opportunities. A Ranger position could also be tasked with initiating a volunteer program focused on park ambassadorship. Conflicts that could be addressed include camping,

³ The police department is currently budgeted for 184 officers. Due to new officers in training and injured officers on light-duty they are currently down 24 officers. Staffing levels are not expected to improve until mid-summer 2021.

⁴ Median officer salary is \$96,006 and the current benefit rate for officers is 34% /\$32,642 for a total of \$128,648 per police officer.

vandalism, wildlife closure violations, and violations of park policies related to alcohol and commercial use among other behaviors.

- Challenges: Hiring new employees is challenging amidst the financial constraints of the pandemic and must be balanced with other needs across the city. Limited commission rangers would not be as highly trained as fully Peace Officer Standards Training (POST) licensed officers, nor would they be able to make arrests - more serious issues would still require support from BPD.

2. Environmental Improvements

2A. Establish an Internal City Clean-up Team

The current model of contracted services for clean-up of hazardous materials is costly, requires increased coordination and reduces flexibility. Bringing these services in-house would provide greater flexibility while also supporting other unmet maintenance needs across the city.

- Cost: \$240,000 per year on wages for a team of four, \$80,000 start-up cost in equipment and training (note that this would not all be new money, as it would replace the \$170,000 spent in 2020 on contracted cleaning).
- Benefits: Staffing a clean-up team would provide more flexibility in a more cost-effective manner than the current methodology where a contractor trained in hazardous materials management supports most encampment clean-ups one or two days/week. In addition, this team could support other unmet maintenance needs across the system when not supporting encampment clean-up. In some cities, this team serves as an enterprise, contracted out to other public and private entities, and thus could provide some self-funding.
- Challenges: This is difficult work and identifying staff could be problematic. Also, as noted above, hiring new employees is challenging amidst the financial constraints of the pandemic and must be balanced with other needs across the city.

2B. Crime Prevention through Environmental Design (CPTED)

Many communities, including Boulder, have designed and constructed specific public amenities to encourage positive behaviors and discourage negative or illegal behavior. As example, many derelict highway underpass areas and bridges have been converted into amazing skateparks now bustling with teens and children skateboarding and scootering within the heart of a community (see Figure 8 for example). Similarly, during the Civic Area planning, many youth expressed a high interest for a skate area that would allow them to skate safely and legally instead of using Pearl Street Mall or University Hill. Staff are considering the opportunity to transform the adjacent area under the library commonly referred to as the “underbelly”. Because of the enclosed nature of the space, poor lighting and the somewhat secluded location, camping and illegal behavior commonly occurs here. This potential use in the underbelly would bring positive activity and a desired and

needed amenity to the area and likely decrease unintended and less desirable uses.

- Cost: \$62,500 to \$125,000 based upon an area ranging from 2,500 SF to 5,000 SF. Note that while funding is not identified for this effort, staff is exploring design and final costs – may return to Council for funding.
- Benefits: Alterations to physical spaces to increase visibility and positive uses can increase safe use of public spaces while protecting them from illegal usage. Skateboarding is regularly a high priority for new amenities from youth and families within the downtown area as well as a request from business owners who experience illegal skating within their properties. This would provide a great complimentary space to the Civic Park while mitigating and preventing unintended uses.
- Challenges: The area under the library is within the floodplain and any improvements would need to be designed and constructed in compliance with flood regulations. The area is also space constrained due to the ceiling height and columns. Funding is not currently identified but could be incorporated into the upcoming 2022 CIP process.

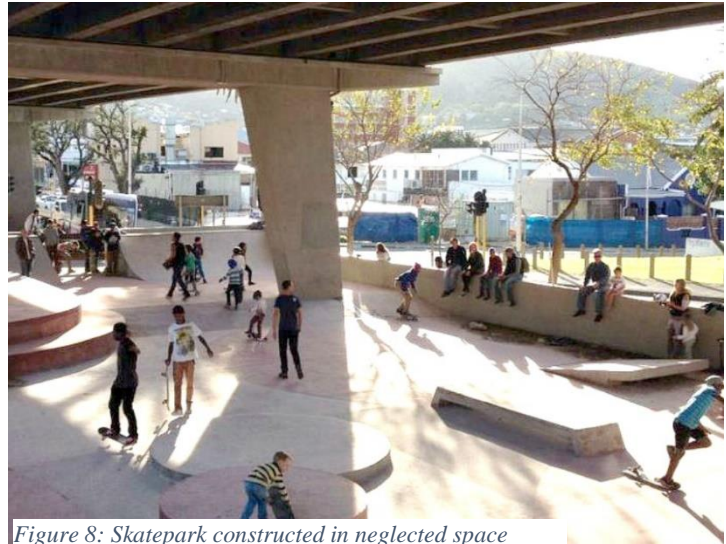


Figure 8: Skatepark constructed in neglected space under highway overpass.

3. Creation of Residential Recovery Housing Options for Meth Users

While meth usage is not limited to homelessness, its use is prominent in encampments. Unfortunately, people with active meth addictions and, often, corresponding criminal records, are not accepted into leasing situations even if they have a housing voucher. HHS staff members have been working with Boulder County and HSBC to explore treatment and recovery-based residential options for vulnerable people experiencing both chronic homelessness and meth addiction. This item is a priority for HSBC in 2021. Under a recovery housing model, a nonprofit provides communal living environments (i.e., group homes) that are focused on sobriety. As HHS develops a plan for this type of program, and additional resource needs are identified, this item could come back to City Council.

- Cost: The estimated cost will vary depending on the number of facilities developed, necessary building rehabilitation costs, counseling costs, etc. Funding for such a project would be accomplished through an interlacing of local, county, and federal funds. Medicare funding would also be included to offset counseling costs and to help support live-in case managers. Potential funding resources include Boulder County General

Fund, City of Boulder funding, Home Investment Partnership Grant, Continuum of Care funds, and supportive funding from health organizations such as Kaiser.

- Benefits: Ownership of units allows for targeted treatment of some of the justice system's highest utilizers and removes addicted persons from dangerous encampment residency. Agencies such as Tribe Recovery in Denver have seen success in their residents achieving long-term sobriety and housing stability.
- Challenges: Location of such a facility will be subject to considerable scrutiny. Such facilities are best served through single-family dwellings. In addition, HSBC is currently investigating the viability of providers to ensure program success and must locate sustainable funding resources for ongoing case management, maintenance, and capital replacements.

4. Adjustment to Boulder's Camping Law

The city could explore amending the camping ordinance by requiring mandatory minimum jail sentences for repeat offenders. The goal of minimum sentences would be to increase mental health and addiction treatment opportunities for individuals who have not engaged in community-based treatment and resources, although currently no misdemeanor defendants are being accepted to the jail and there is no certainty that when they are, services will be available for them.

- Cost: The costs of requiring mandatory minimum sentences would be a potential increase in the city's utilization of the jail for municipal offenses. Unlike other municipalities, the city of Boulder does not have an allotment of bed space nor does it pay per bed at the Boulder County jail.
- Benefit: The potential benefit of minimum sentences would be increased punishment for repeat violators and, in theory, access to existing treatment programming at the jail, which has minimum length of stay requirements.
- Challenges: Due to recent bond reform passed by the Colorado legislature, it may be difficult to keep individuals in custody. This is because they would be eligible to be released from jail at their first appearance. If they then again fail to appear for court, a warrant may issue, however, they would still be eligible for automatic release if re-arrested due to the recent bond reform legislation.

Next Steps

City Council's input will inform analysis and/or implementation of recommendations. Staff can return to City Council with more analysis of off-cycle budget requests (including funding options and service trade-offs) in the second quarter, and other requests can be analyzed for 2022 budget development.

Appendix A: Legal Analysis and Enforcement Options

There are several legal constraints limiting the city's response to illegal encampments. The Fourth Amendment provides protections against unreasonable searches and seizures. A police officer needs either a judicial warrant or probable cause to believe that a crime has been committed to search a tent or to seize property. Without a warrant, a police officer cannot unzip a tent to investigate whether a person is engaged in "activities of daily living." The city attorney's office has obtained search warrants as needed to support the police department. The Fifth Amendment prohibits the taking of property without just compensation. The Boulder Revised Code provides additional requirements for the storage and disposal of abandoned property. The city's protocol provides for storage and an opportunity for individuals to retrieve property. Providing notice prior to cleaning an encampment allows the campers time to remove property to avoid seizure.

The Eighth Amendment prohibits cruel and unusual punishment. The Ninth Circuit Court of Appeals, covering California, Washington, Oregon and Idaho, has held that enforcing a camping ban without providing adequate shelter violated the Eighth Amendment. While this is not a binding precedent in the Tenth Circuit, which includes Colorado, it may be considered persuasive authority by some judges. The city attorney's office has thus far successfully defended the city's camping ordinance against three Eighth Amendment challenges.

Federal law allows individuals to sue for violations of constitutional rights. Last year, the legislature added a state cause of action for violation of the state constitution. In 2018, homeless activists sued Denver to challenge encampment cleanups. In February 2019, Denver entered into a settlement agreement to resolve the litigation. In addition to paying attorneys' fees and nominal damages, Denver agreed to provide seven days' notice before major cleanups and to store property for sixty days. In October 2020, Denver was sued for violation of the settlement agreement. The plaintiffs are currently seeking an injunction prohibiting any cleanup of an encampment for the duration of the pandemic.

The city of Boulder has structured its cleanup process to allow for adequate notice and storage of personal property in the hope of avoiding liability while still enforcing the camping ban.

Appendix B: Statement from Chip, CEO of the Downtown Boulder Partnership

The Downtown Boulder Partnership (DBP) reports an increasingly persistent presence of illegal encampments in Boulder, and particularly in the Civic Area. According to DBP, the encampments present both direct and indirect harm to downtown, and to those who wish to visit downtown and the Civic Area. The DBP wishes to maintain the integrity of, and ensure equitable access to, our public spaces and to protect private investment that supports Boulder's economic vitality.

The DBP reports a simultaneous increase in observed business district encampments and crime/anti-social behavior. Businesses report an emboldened class of shoplifters, vandals, and other low-level criminals who are not deterred by police. Noting that there are no easy solutions, the DBP believes we must address encampments in a way that protects the safety of all involved and our public spaces.

APPENDIX C: Working Definitions

Camping Ordinance

City of Boulder B.R.C. 5-6-10 prohibits camping within any park, parkway, recreation area, open space, or other city property.

Coordinated Entry

A coordinated system to screen single adults experiencing homelessness to receive services.

BTHERE (Boulder Targeted Homeless Engagement and Referral Effort)

Multi-disciplinary team with members having lived experience, mental health experience, and homelessness outreach experience. The team provide initial outreach services in targeted areas to encourage the engagement of people experiencing homelessness with system services.

Encampment

Three or more unauthorized shelters and items of daily living such as for eating or sleeping in an identifiable area which appear to be being used for illegal camping. Would include camping equipment and personal property, that to a reasonable person evidence that person has remained, or intends to remain, on the property overnight or on the property when it is closed to the public. Camping equipment includes but is not limited to, tarps, blankets, sleeping bags, cooking equipment and other items commonly associated with daily living.

Homeless Navigators

The Boulder Municipal Court has one full-time and one half-time Homeless Navigators. They are tasked with working with unhoused individuals who are the highest utilizers of the criminal justice system. Their work is focused on identifying individual needs, working closely with clients to connect them with services, assisting clients in becoming eligible for and finding permanent housing, and helping them retain housing. Since many of their clients have significant physical and/or mental health issues, they often accompany and coach them through the various applications and appointments that are part of the process. They frequently work in tandem with the HOT Team.

Homeless Outreach Team (HOT Team)

Police officers are present and visible in areas where homeless gather in order to normalize police presence, increase visibility and build trust. They identify and proactively patrol secluded areas occupied by homeless and actively seek out those who are not engaged with homeless service providers. Officers work to develop working relationships with homeless individuals in order to provide appropriate resource referrals.

Outreach

Any number of relationship-building or connections to resources on behalf of persons experiencing homelessness.

Person Experiencing Unsheltered Homelessness

An individual whose primary nighttime residence is a public/private space not designated for or used as a regular sleeping accommodation for human beings. This can include people living outdoors, in encampments, in vehicles, in tents, or other places not suitable for long-term human habitation.

Shelter

Any cover or protection from the elements other than clothing. The Camping Ban ordinance does not include designated congregate-living facilities for emergency, temporary housing (e.g., Boulder Shelter for the Homeless).

APPENDIX D: Memorandum from Office of the City Attorney, Prosecution Division

RE: Enforcement of Boulder's Camping Ordinance: Process, Challenges, and Strategies

Boulder's camping law makes it illegal for any individual to sleep outside overnight with any form of shelter other than clothing. This law has been the subject of numerous legal challenges, most recently in the spring of 2020. Most of the legal challenges have focused on the law's impact on individuals experiencing homelessness. In 2019, approximately 99% of individuals charged with illegal camping in the city of Boulder were experiencing homelessness.¹ Because this law is enforced primarily against people experiencing homelessness, there are unique challenges involved in the legal process that are not present at the same rate with housed individuals. These previously existing challenges have been amplified by the COVID-19 pandemic, and new challenges have been created by the pandemic.

This memorandum will outline the legal process involved in enforcement of Boulder's camping law, address challenges involved with the target population, and highlight strategies implemented to make enforcement as effective and humane as possible. The legal process is described in three phases: investigative, pre-trial, and trial. The challenges involved at all phases include high rates of mental illness, addiction, trauma, poor physical health, failure to appear in court, bail reform, and high utilizers of emergency services. Furthermore, new problems created by the pandemic are discussed such as the lack of the jail as a resource and changed homeless services. Strategies to effectively enforce the camping law include focusing on housing high utilizers, targeted prosecutions, and the inclusion of community outreach and lived experience in developing effective responses. Moreover, while the focus is primarily on violations of the camping law, it is impossible to separate out camping defendants from defendants charged with similar quality of life type crimes such as trespassing, open container of alcohol or other violations of the Boulder Revised Code commonly committed by people experiencing homelessness.

It is important to note that the majority of people experiencing homelessness never come into contact with the criminal justice system. The population discussed in this memorandum is a small subset of a larger population. This subset, however, has unique challenges and can represent the most visible portion of the population of people experiencing homelessness in our community. This small population presents complex, nuanced challenges that do not have simple solutions.

There is no one answer to ending camping in the city of Boulder when the underlying causes of unsheltered homelessness remain unsolved in our society. The response brings together varied disciplines such as law enforcement, addiction experts, and housing specialists who all share the same goal of utilizing limited resources to make unsheltered homelessness have the least harmful impact on the community and the best chance of positive change for those experiencing unsheltered homelessness.

Outline of the legal process

Because Boulder's camping law is a criminal violation that carries the possibility of up to 90 days of jail, all individuals charged with violating this law are afforded the same constitutional and statutory protections as anyone who is charged with a more serious crime such as aggravated assault or motor vehicle theft. These protections include the presumption of innocence, the right to a jury trial, representation by an attorney, and the right to have the prosecutor prove guilt beyond a reasonable doubt, which is the highest legal burden in the United States. Virtually all individuals charged with camping meet the criteria for a court-appointed attorney which is provided by the criminal defense clinical program at the University of Colorado School of Law. The legal process for enforcing the camping law has distinct stages: the investigative phase, the pretrial phase, and the trial phase.

Investigative phase

The investigative phase is the first step in the legal process of enforcing Boulder's camping law. It is the most visible aspect of the city's enforcement of the law, but it is only the beginning of a lengthy process. Three different law enforcement agencies investigate potential violations of Boulder's camping law. They are the Boulder Police Department, Open Space and Mountain Parks Rangers, and the University of Colorado Police Department. In 2019, however, 92% of camping cases originated from the Boulder Police Department.ⁱⁱ

During the investigative phase, a law enforcement officer collects evidence to determine if a violation exists. Then, depending on the evidence and the discretion of the officer, a criminal charge usually in the form of a summons, also known as a ticket, to appear in court is issued by the investigating officer. Officers are encouraged to use tickets rather than arrests for allegations of camping. This is because the nature of the crime of camping does not involve a serious, immediate threat to public safety, unlike aggravated assault or domestic violence. Furthermore, someone booked into the Boulder County Jail on an allegation of camping will be entitled to immediate release upon seeing a judge due to bond reform passed by the Colorado Legislature in 2019ⁱⁱⁱ.

The legal burden, also known as standard of proof, for a police officer to issue a ticket is probable cause. Probable cause is a much lower burden than beyond a reasonable doubt, which is the burden to prove someone guilty of a charge at a trial. While no precise definition exists of what probable cause entails, it is typically thought of as information sufficient to lead a prudent person to believe that an individual has committed a crime.

A typical camping investigation occurs between the hours of sunset and one hour after sunrise. This is due to the law's definition of camping which states that napping during the day does not constitute a violation. Because of the time-of-day requirements of the law, police officers are often required to wake individuals suspected of camping to complete their investigative process and issue a ticket. In 2019, approximately 84% of camping investigations occurred between 11pm and 8am.^{iv} Depending on the location of

the violation, number of individuals present, attitude of the suspect, prior history of the suspect with the officer, the suspect's mental and physical condition, and other factors these interactions range from pleasant to confrontational. Most interactions between camping suspects and police officers are relatively short and pleasant. In 2019, 53% of officer interactions with camping suspects were listed by the officer as either excellent or good compared to 35% that were listed as fair or poor.^v

During a camping investigation, an officer is trained to look for evidence that supports the case that the individual was sleeping outside overnight with some form of shelter. Sleeping bags, blankets, tents, cardboard boxes, litter, and statements from the individuals themselves are the most common pieces of evidence noted by the officer to support an allegation of camping. Depending on the officer's experience and the interaction between the suspect and the officer, many camping investigations are also accompanied by a conversation between the officer and the suspect about Boulder's homeless services. These conversations are meant to both inform the suspect of what services are available and document the suspect's attitude toward engagement in those services.

Once the determination has been made by the officer that a camping violation is supported by the evidence, the officer will issue either a ticket or give warning without a criminal charge. If the interaction was pleasant and the suspect assures the officer that they are "just passing through" an officer might decide to issue a warning rather than a ticket. If the interaction was unpleasant or the officer believes the camping may persist, then the officer typically decides to issue a ticket. By accepting service of the ticket, the suspect promises that they will appear in court for arraignment. Usually, the arraignment occurs about two weeks after the officer issued the ticket. After serving the suspect with a ticket, the officer then completes a short report documenting the incident. Once the officer sends his ticket and report to the Boulder Municipal Court, the investigative phase is complete. Once charged with the crime of camping, the camping suspect becomes a camping defendant.

Pre-trial phase

The pre-trial phase is what occurs before a judge accepts a plea of guilty or not guilty in a case. Like many other types of cases in municipal court such as dog at large or possessing an open container of alcohol, most camping cases are eligible to be closed without the need to appear in court if the defendant calls the court and pays a fine over the phone or mails in a fine. This option is rarely used since individuals charged with camping typically do not have the resources necessary to pay a fine such as discretionary cash, phones, credit cards, or easy access to the postal system. Thus, most people charged with camping are required to appear at 8:30 a.m. during a regular arraignment session for general offenses at the Boulder Municipal Court.

The purpose of an arraignment is to inform defendants of their rights, the court process, and to formally read the allegations. These arraignment sessions occur once per

week and had an average of 72 criminal cases per week in 2019.^{vi} Out of the approximately 3600 criminal cases set for arraignment in 2019, approximately 55% or 2000 were cases filed against defendants experiencing homelessness.^{vii} The vast majority of these cases involved quality of life type crimes such as camping, trespassing, or open container of alcohol. Only 6% of cases filed in the Boulder Municipal Court against defendants experiencing homelessness involved violence or serious threats to public safety such as third-degree assault, threatening bodily injury or resisting arrest.^{viii} The Boulder Municipal Court, however, does not hear felony cases such as aggravated assault which are filed in state court.

During an arraignment, the defendant is presented with options on how to proceed with their case. They may plead guilty and then be sentenced by the judge. They may plead not guilty and set their case for trial. They may also ask to speak with a prosecutor or defense counsel if they are interested in plea bargaining their case or seeking legal advice. Some defendants are encouraged to speak with a prosecutor or defense counsel if they have multiple cases or if it seems like they are unsure of what to do. Additionally, the court has two homeless navigators who are present in the courtroom during arraignments. Their functions are numerous but primarily they serve to connect homeless individuals with resources in the community to make future criminal justice system involvement less likely. Judges, prosecutors, and defense counsel rely on the homeless navigators to be subject matter experts in homeless resources and individuals' situations. The homeless navigators assist in the pre-trial phase by providing updates and information that informs the positions of the parties.

Most camping cases resolve during the pre-trial phase through agreements between the prosecutor and defendant in the form of plea bargains or guilty pleas with an agreed to sentence. A plea bargain is an agreement between the prosecutor and defendant that if the defendant does certain things then the case will be dismissed. A guilty plea is the defendant agreeing to become convicted of the crime by pleading guilty to the charge and then the judge imposes the agreed to sentence. A sentence is a legal consequence imposed by a judge for the commission of a crime. The judge has the authority to deviate from the agreed sentence but, if they are contemplating doing so, will inform the defendant they might not follow the agreed sentence before accepting the guilty plea. A sentence will incorporate the facts surrounding the offense, the defendant's criminal history, and the defendant's present circumstances.

If the prosecutor and the defendant cannot come to an agreement on either a plea bargain or recommended sentence, then the defendant will set his or her case for a trial which then starts the trial phase.

Trial phase

The trial phase encompasses everything that occurs between the defendant entering a plea of not guilty and the conclusion of the trial. It can include additional plea bargaining, witness interviews, evidence review, motions hearings and the trial itself.

Because camping is a criminal offense with the possibility of jail as a sentence, camping defendants are eligible for a jury trial.

In the Boulder Municipal Court, most jury trials consist of a jury of six individuals and last one day. The jury trial begins with jury selection then proceeds to evidence presentation by the prosecution. At the conclusion of the prosecution's case, the defense may choose to present evidence. The trial is completed with closing arguments and then jury deliberation and verdict. Jury trials require significant resources. Each jury trial requires over 100 hours of combined work by prosecutors, judges, defense counsel, court staff, and jurors. The fact that camping is a relatively minor offense does not reduce the resources required to bring a case through jury trial. In fact, camping cases that proceed through the trial stage can be more time consuming than most cases because they are often accompanied by constitutional challenges to the law that require additional court appearances.

While the legal process follows procedures set through law and policy, challenges exist both within that legal process itself and outside the process that make enforcement of Boulder's camping law complex, resource intensive, and, for a small segment of the unhoused community, ineffective at changing behavior.

Challenges

Because Boulder's camping law is enforced against people experiencing homelessness, there are unique challenges in the legal process that are not present to the same extent with different demographic groups such as college students or housed individuals. Furthermore, these challenges do not exist in a vacuum. They often exacerbate other challenges. For example, it is not uncommon for a camping defendant to have serious mental illness such as bipolar disorder or schizophrenia, a drug addiction, and a physical disability. While individuals with resources and good support systems can overcome one or more of these challenges, individuals who are homeless are reliant on government resources, charity, and individual resourcefulness to survive. It is still useful to talk about specific categories of challenges, but it should be remembered that on a practical level these challenges are combined, amplified, and unique to every individual. Overrepresentation in the unhoused community of societal harms such as mental illness, drug addiction, trauma, and racism are formidable barriers to using Boulder's camping law to reduce street homelessness.

Mental illness

Among the unhoused, mental illness is often the most visible characteristic. Serious mental illness is defined as a mental, emotional, or behavioral disorder of sufficient duration to meet diagnostic criteria and resulting in serious functional impairment which interferes with one or more major life activities. The most common serious mental illnesses in the unhoused population are schizophrenia, bipolar disorder, major depressive disorder, and post-traumatic stress disorder. Substance use disorder is also a common mental illness in this population but will be discussed separately.

Nationally, about 25% of the unhoused population have a serious mental illness^{ix} whereas only 4.2% of the general population have a serious mental illness.^x Mental illness alone increases the chances of criminal justice system involvement, even without homelessness. In 2019, 50% of inmates at the Boulder County Jail had a diagnosed mental illness.^{xi}

The challenges presented by a defendant who has a serious mental illness are numerous. Depending on the mental illness, the individual may be disorganized, combative, lethargic, delusional, or all of those things in a span of five minutes. This can make a productive conversation with a police officer or a serious legal proceeding difficult or impossible to undertake. This problem is especially difficult for defense counsel trying their best to represent their client's interests. The Boulder Municipal Court does not have the resources to adequately address cases where the defendant may be mentally incompetent to proceed. Typically, if a criminal court has questions as to whether the defendant can know the difference between right or wrong, or if the defendant can knowingly and intelligently participate in their case, a competency evaluation will be ordered. This means that the defendant will be scheduled to undergo psychiatric evaluation to determine if the case may proceed. Competency evaluations are very resource intensive undertakings that even courts who hear serious felony charges have difficulty completing in a timely manner.^{xii} Because the Boulder Municipal Court does not have access to state-funded resources to formally assess a defendant's competency, the task of accounting for their mental state is left to prosecutors, judges, and defense counsel—none of whom are mental health professionals.

Further complicating the problem, some individuals who suffer from serious mental illness can show little or no obvious signs of mental illness. One camping defendant in the Boulder Municipal Court accumulated scores of cases and was arrested over two dozen times before any mental health professionals in Boulder County knew he was schizophrenic. Mental illness, even when it is classified as serious, is not always apparent and obvious. Mental illness can face inward. In such cases, the individual shows no observable signs or behaves in ways that can be wrongly ascribed to other causes such as fatigue, drug addiction, or an individual's unique personality. Others become adept at hiding their illness when around other people, especially those in authority such as police officers, judges, or prosecutors. For example, another camping defendant was able to carry out an articulate, detailed, and specific conversation with a judge and prosecutor about the status of his housing situation, only to minutes later be observed outside the courthouse entrance banging his head against the wall while screaming at the sky. Stigma surrounding people who suffer from mental illness exists in all aspects of our society from the institutional level down to the individual themselves feeling shame regarding their condition.

Addiction

Substance use and its associated psychological and physical disorders also has a disproportionate impact on the unhoused community. National statistics show that over a third of individuals who are experiencing homelessness have substance use problems.^{xiii} While substance use disorders are recognized as a mental illness by the medical

community, the response to those addicted to drugs, especially those in the unhoused community, consists of both public health interventions and criminal prosecutions.

While individuals with substance use disorders are frequently cited into Boulder Municipal Court on allegations of crimes like camping, the city does not prosecute cases involving violations of Colorado's Uniform Controlled Substances Act. Possession and use of drugs such as meth are state law violations which are prosecuted by the district attorney's office. Theft, which is sometimes committed to support a drug addiction, is another common crime for unhoused individuals that is prosecuted by the district attorney's office. This is an example of the complexity surrounding some of the legal situations of unhoused individuals, who often have criminal cases in multiple different court systems.

Because alcohol and other drugs are not allowed to be possessed or consumed in Boulder's homeless shelter, addicted individuals often feel they have no choice but to violate Boulder's camping law. Evidence of their addiction is then on display for the public such as discarded bottles, needles, and behaviors associated with individuals who are intoxicated. While problems associated with drug addiction for individuals who are housed can be hidden from view, Boulder's unsheltered community does not have that option. The negative effects of drug addiction in public spaces generate complaints from the community that Boulder is not doing enough to curb illegal camping. While the police respond to these complaints and do proactive enforcement, a citation for illegal camping alone will have little effect on an individual in the throes of addiction. Changing the behavior of an addict is difficult in the best of circumstances, requiring both individual commitment and the expenditure of significant resources. An individual might want to change their habits but if they do not possess the financial means and support structure necessary to change then success is unlikely.

Furthermore, the Boulder Municipal Court does not have access to treatment resources. If someone comes to court who is addicted to drugs, they can be referred to what resources exist in the community. For unsheltered individuals however, these resources are sparse, difficult to access, and limited in scope. Most treatment available for this population is on an outpatient or non-hospitalized basis. Unlike the court's successful program for young people charged with alcohol or marijuana crimes, unhoused individuals do not have the option to pay for substance use education and treatment to gain dismissal of their case. Moreover, treatment for substance use for individuals experiencing homelessness is made more difficult simply because the lack of stable housing is an additional barrier. An addict is unlikely to successfully mitigate their drug habit while living under a bridge or in a tent in a park regardless of the availability of outpatient treatment. The number of spots for inpatient drug treatment in Boulder County for unhoused individuals is so limited that it is not a realistic option for most people who could benefit from its use.

Among professionals who work in the unhoused community, it is a common occurrence to not know whether an individual is experiencing symptoms of drug intoxication, mental illness, or both. The lines between behavior caused by drugs and

behavior caused by mental illness become blurred to the point that trying to distinguish between the two is often impossible.

Trauma

Individuals experiencing homelessness, especially those who have been unsheltered for a long time, have high rates of trauma. While being homeless itself is traumatic, a high percentage of people who are homeless experienced trauma as children. Parental substance abuse, child abuse and neglect, and other adverse childhood experiences predict many negative outcomes in adulthood such as mental illness, addiction, poor physical health, and homelessness. Roughly 45% of men and 60% of women who are homeless suffered at least one form of trauma as a child. Among the unsheltered homeless, the rates of childhood trauma are likely higher since studies often exclude those who are hospitalized, incarcerated, or otherwise difficult to examine.

Individuals who are trauma survivors experience a wide range of effects: estrangement from others, feelings of powerlessness or helplessness, fear and loss of safety, shame, blame, guilt, and stigma. Trauma can also affect how an individual regulates their emotions in response to stressors—causing them to engage in high-risk or self-harming behaviors. For example, one individual who was charged with illegal camping 16 times in a span of less than two years had notoriously difficult and sometimes dangerous interactions with police officers. Through this individual's involvement in the Boulder Municipal Court system, it was learned that as a child they had witnessed their father, who was a police officer, beat and sexually assault their mother on multiple occasions. This put their behaviors with the police in context.

Prosecutors and judges often note a defendant's attitude with the police when determining appropriate plea bargains or sentences. The concept is that if a defendant had a good attitude with the officer, then some form of leniency is more appropriate than if the defendant was difficult or had a poor attitude during the interaction. The high rate of trauma in the unhoused population and its subsequent effects call this practice into question in the context of enforcement of Boulder's camping law. A policy that punishes negative interactions with law enforcement must be based on the idea that the individual can control how they respond to stressful situations.

Physical health

In addition to mental illness, addiction, and trauma, people experiencing homelessness also have poorer physical health than housed individuals. According to a study conducted by the US Department of Health and Human Services, homeless individuals are twice as likely to have unmet medical needs than housed individuals and are twice as likely to have visited an emergency room in the past year.^{xiv} Diseases or health problems such as pneumonia, tuberculosis, hepatitis C, cardiovascular disease, cancer, diabetes, HIV/AIDS, asthma, and obesity are common among homeless individuals.

A physician from Boulder Community Health wrote a letter outlining the health difficulties of one of her homeless patients. This patient had been homeless at the age of 14 and began getting citations in the Boulder Municipal Court when he was still a juvenile. The physician wrote, “[o]n the street, he cannot safely manage his insulin, as he notes his belongings are frequently stolen. Therefore, on admission here, his diabetes is poorly controlled and his high blood sugars have contributed to peripheral neuropathy, rendering him [with abnormal, uncoordinated movements] with difficulty safely [walking]. He currently requires a walker, which again creates difficulty living on the street.” This individual has accumulated 12 camping cases before the age of 30.

The lack of stable housing, among other factors, exacerbates the seriousness of these issues since for many homeless individuals, their place of primary medical care is the emergency room.

Failure to appear, bond reform, and jail

Courts across the country struggle with the problem of defendants failing to appear. The justice system cannot be effective if people do not voluntarily participate in it. It is a common perception that if an individual fails to appear then they are intentionally trying to avoid the consequences of their criminal case. However, not all individuals who miss their court dates do so willfully. People miss their court date for a multitude of reasons: they forgot when their court date was, they did not understand what was required of them based on the ticket they received, or they have competing priorities such as work, family obligations or medical appointments. The national failure to appear rate for felonies is around 21-24% of cases.^{xv} National failure to appear rates for misdemeanor cases is likely much higher. For example, in New York City the misdemeanor failure to appear rate in 2014 was approximately 40% of cases.^{xvi} The method of calculating rates of failure to appear are different across jurisdictions and case types which makes direct comparisons difficult.

The Boulder Municipal Court is no exception to the failure to appear problem, and it is particularly prevalent among camping defendants. In 2019, approximately 60% of camping cases had at least one failure to appear associated with the case.^{xvii} While many of these defendants did eventually appear, either out of custody at the Boulder County Justice Center or in custody at the Boulder County Jail, failures to appear are a drain on limited criminal justice resources and cause the system to work less efficiently and effectively. One of the principal strategies for addressing camping cases is to connect individuals with resources that may assist them in ending their homelessness. When people fail to appear and end up in custody because of a warrant, it is difficult to connect those individuals to resources from the confines of a jail courtroom. It is much easier and effective to help someone during a voluntary court appearance because there is more flexibility and resources that can be brought to bear. Furthermore, people are more willing to participate in that assistance when they feel they have some choice in the matter.

Because most camping charges come in the form of a ticket with a promise to appear in court later, the burden to follow through with the legal process lies with the defendant. They must appear at the date and time listed on the ticket or, if they do not appear, risk a warrant for their arrest. If an individual is arrested on a warrant for failing to appear in a camping case, they are entitled to a release at their first in-custody court appearance. They are released without the requirement to post a cash bond due to a law passed by the Colorado legislature in 2019.^{xviii} If a defendant then does not appear in court after being released on their no cash bond, another warrant may issue but they will still be entitled to immediate release regardless of the number of prior failures to appear. This state law significantly curtails the ability to impose jail as a sanction for illegal camping because the Boulder Municipal Court has no legal authority to continue to hold a camping defendant in custody if they choose to exercise their right to release under the law.

Another difficulty of utilizing the jail to address defendants charged with camping is access to existing behavioral health programming is very limited for people charged with relatively minor crimes. This population cycles in and out of the jail too quickly for treatment to be effective. Most of the treatment programs for mental illness and addiction present at the Boulder County Jail are only available to defendants staying at the jail longer than 45 days. This could not be corrected solely by lowering eligibility criteria because it takes time for behavioral health practitioners to establish necessary trust and relationships with the individuals they are trying to help. In the past two years, there has been an increased emphasis on providing support to individuals who are frequently incarcerated for shorter stays such as the Behavioral Health Assistance Program, Mental Health Diversion Program, and the hiring of a reentry coordinator who is focused on individuals staying at the jail less than 45 days.

The cycle of high utilizers

Some individuals have such frequent contact with law enforcement and other emergency services that they become known as high utilizers. Common characteristics of high utilizers are serious mental illness, substance abuse, and homelessness. National statistics are sparse regarding this phenomenon; however, it is a problem that many cities face. For example, in Miami-Dade County, 97 high utilizers cost taxpayers \$13 million in criminal justice costs over a five-year period ending in 2010.^{xix} The city of Denver spends approximately \$7 million per year on its top 250 high utilizers.^{xx} The total costs of high utilizers across different systems such as emergency rooms, detox centers, mental health facilities, emergency shelters, law enforcement, and court systems is difficult to accurately calculate so it is likely the costs are underestimated.

Boulder is also no exception to the challenge presented high utilizers. High utilizers comprise 13% of homeless defendants and account for 44% of criminal cases among the unhoused population.^{xxi} From March 2019 to February 2020, there were 71 individuals who received at least six criminal cases in the Boulder Municipal Court, who would be considered “high utilizers.”^{xxii} During that same period, there were 535 unique individuals experiencing homelessness who were defendants in the Boulder Municipal

Court.^{xxiii} Other than the 71 high utilizers, most of these individuals had few if any prior cases in the court and almost half did not receive an additional criminal case in a one-year period.

Despite the relatively low numbers of high utilizers, the expenditure of resources is significant. These individuals have high rates of serious mental illness and substance abuse.^{xxiv} In particular, substance abuse is extremely prevalent amongst the most frequently arrested, with rates as high as 96.9% observed.^{xxv} This population also tends to be older than the less frequently arrested. The median age of all people booked into the Boulder County jail in 2019 was 34 years old, while the median age of high utilizers in 2019 was 41. These numbers closely follow data from other jurisdictions.^{xxvi} At the time of receiving their charges, all 71 high utilizers were unhoused in Boulder and the median amount of time they have been unhoused in Boulder was three years.

Boulder's 71 high utilizers have totaled 571 camping charges during their time in Boulder.^{xxvii} Additionally, the number of camping charges is only a fraction of this group's involvement in the criminal justice system. Other common violations include trespassing, open container of alcohol, petty theft, and drug possession, some of which are prosecuted by the district attorney's office. Most of this group's criminal charges are for relatively minor crimes which often means they do not spend very much time in jail after being arrested, typically in the order of a few days to a couple of weeks. Because of recent bond reform mandating release without cash bail for low-level offenses, the amount of time spent in jail per arrest will likely decrease even further.

Unique COVID challenges

Lack of jail as a tool and resource

The pandemic has forced many communities to make difficult decisions regarding the utilization of local jails because of the risks associated with crowding people together closely for long periods of time. These risks are not purely hypothetical. The El Paso County Jail was the source of the second largest outbreak of the coronavirus in Colorado, with over 900 inmates and over 70 staff members testing positive in early November 2020.^{xxviii} Fortunately, the Boulder County Jail has not been the source of a large outbreak due to the swift decision of Sheriff Joe Pelle on March 30th, 2020 to release low-risk inmates and reduce the number of individuals accepted into the jail. While this decision has most certainly prevented additional spread of the virus in our community, it has come with negative effects since the jail is a key component in enforcement of Boulder's camping law.

In a typical week, the Boulder Municipal Court holds arraignment sessions at the Boulder County Jail on Mondays, Wednesdays, and Fridays. There is a small courtroom inside the jail that is used by multiple different court systems for this purpose. Because Sheriff Pelle ordered that no municipal warrant arrests be accepted at the jail, these arraignment sessions have not occurred since March 2020. As a result, individuals who fail to appear in the Boulder Municipal Court do not get arrested. For many individuals,

the only opportunity for them to connect with behavioral health services is at the jail. Both the consequence for the failure to appear and the ability to connect with needed mental health and addiction resources has been temporarily halted due to the pandemic. Until the vaccine is widely available, the jail will not be a tool to address individuals accused of relatively minor crimes who will not voluntarily engage in the justice system.

Changing homeless services

Homeless services in the city of Boulder had to adjust the way they operated due to the pandemic. This included the Boulder Shelter for the Homeless, Mental Health Partners, Harvest of Hope, the Social Security Administration, medical providers, faith-based charity groups, and many more. Providing services to the unhoused population is challenging in normal times and the fact that organizations were able to continue to operate at all during the worst health crisis in a century is an amazing feat.

While each organization faced unique challenges in how to continue to operate, the changes made often reduced access, resources, and increased the barriers faced to those experiencing homelessness. These changes were particularly disruptive for the unsheltered mentally ill. Many places that previously accepted walk-in appointments switched to remote-only or by-phone appointment only. Because people experiencing homelessness often lack the resources necessary to participate in such a technology driven system, they face barriers to access that did not previously exist. For example, Boulder County's food assistance program switched to remote only, requiring a mailing address for individuals to receive the card containing their benefits. Where previously an individual could walk into a housing and human services office to get their food assistance, now they must apply for and wait to be mailed a card. Lack of a mailing address is a common problem faced by the unhoused and the pandemic has only worsened the problem.

Furthermore, assisting those experiencing homelessness, especially those with behavioral health problems, involves building and maintaining trust. This normally difficult task is made nearly impossible when person-to-person interaction is unavailable or curtailed. The value of human connection is impossible to quantify, however its importance in this area cannot be understated.

Enforcement Strategy

While the challenges presented in enforcement of Boulder's camping law are both numerous and complex, these problems have been the focus of hard work by many dedicated individuals committed to serving the entire community, including those who are unhoused. The guiding principles for enforcement include housing high utilizers, targeting prosecutions on repeat offenders, and utilizing the knowledge and experience of the entire community, including the unhoused, to enforce the camping law more effectively.

Focus on housing high utilizers

Boulder's evidenced-based housing first approach to homelessness is being applied in the criminal justice context as a strategy to reduce the number of high utilizers. Housing not only improves the life of the individual; it also greatly reduces their involvement in the criminal justice system. Among Boulder's previously unhoused high utilizers who received assistance in finding stable housing, usually in the form of permanent supportive housing, the number of charges and arrests were reduced by over 90%.^{xxix} Many of these individuals would not or could not use the homeless shelter and were able to go from unsheltered to a housing solution with the assistance of the Boulder Municipal Court and Boulder Police Department's Homeless Outreach Team.

One such individual had 52 arrests and totaled 58 criminal cases in the Boulder Municipal Court over the course of six years. In addition, he had dozens of stays at Boulder's detox center due to how frequently and heavily he would become intoxicated. Through his persistent efforts and those of the municipal court homeless navigator and staff at the Boulder Shelter for the Homeless, he received housing and has not been arrested or taken to the crisis center since.

The process of housing a high utilizer is long, difficult, and unique for everyone. Once a high utilizer agrees to start or restart working on housing, they must go through the process of obtaining an identification, social security card, and birth certificate. While housed individuals might have these documents safely tucked away, unhoused people do not have that ability. For many, simply obtaining an identification is a lengthy process involving hospital records, high school transcripts, or other documentation that helps them prove their identity to the Department of Motor Vehicles. For some, they must retain the assistance of an attorney through Colorado Legal Services just to get an identification. Expecting individuals who have serious mental illness and addiction to navigate this process without assistance while living on the street is unrealistic. This is an example of where the Boulder Municipal Court homeless navigators play a vital role in the process of housing high utilizers.

High utilizers who come to the Boulder Municipal Court out of custody are eligible to have their cases dismissed if they have taken steps, such as obtaining an identification, towards ending their homelessness. This policy is meant to reward and incentivize individuals to continue along the path to a long-term housing solution that will reduce their involvement in the criminal justice system.

Targeted prosecutions

Some high utilizers present such difficult challenges that there is no clear pathway for them out of their present circumstances. To address this problem, the Boulder City Attorney's Office began a series of targeted prosecutions in March of 2019. The goal of the targeted prosecutions was to interrupt the cycle these individuals have been in long enough to make significant progress towards housing while using the least amount of jail time as necessary. Of the 33 individuals targeted, 17 were successfully housed although one has since been evicted and another has died.

These targeted prosecutions involved consultation and collaboration with behavioral health professionals, reentry experts, housing specialists, and law enforcement such as the Boulder Police Department's Homeless Outreach Team. While each targeted prosecution was custom tailored to the individual's circumstances, each prosecution presented the individual with the choice between specific actions they could take and would be assisted with that would move them towards ending their homelessness or continued criminal prosecution and jail time. Some high utilizers voluntarily remained in the Boulder County Jail even though they were eligible to be released because they wanted to complete the actions that would help them break the cycle they were caught in, such as waiting until a Vivitrol injection was available to help control their substance abuse.

Community engagement and lived experience

In addition to focusing resources on high utilizers and targeting prosecutions on repeat offenders, the Boulder City Attorney's office has increased its efforts at community engagement and placing more importance on those with lived experience in guiding its practices. For example, members of the city attorney's office have volunteered at community breakfasts for those experiencing homelessness on numerous occasions in the past two years. While this practice has been curtailed due to the pandemic, it has allowed for community building and trust to be extended between groups that traditionally have been at odds with one another. In addition, the city attorney's office has volunteered at the food bank Harvest of Hope for both their services for people with kitchens and those without kitchens. For the past two years, the Boulder City Attorney's office and the Boulder Municipal Court has participated in the Fresh Start warrant forgiveness program that required community outreach and education among the unhoused population.

Furthermore, a prosecutor from the Boulder city attorney's office sits on the steering committee of the Boulder County Reentry Council. This community-based organization meets every month at the Boulder Shelter for the Homeless and includes government officials, non-profit leaders, mental health professionals and others interested in reducing crime in the community. This organization has been responsible for many of the successes of housing particularly vulnerable individuals who have been frequent violators of Boulder's camping law.

Individuals who have prior lived homeless experience, especially those who were once high utilizers, are a source of inspiration and ideas for how to better address the needs and problems associated with this population. One individual in particular, Jennifer Livovich, has been instrumental in this regard. After fleeing a domestic violence situation in another state, Jennifer found herself homeless in Boulder and addicted to alcohol. She received dozens of criminal cases in Boulder Municipal court, was arrested 15 times, and spent 262 total days in the Boulder County Jail. She worked with the court's homeless navigator and was accepted to the Fort Lyon supportive residential community to work on her sobriety. Since leaving Fort Lyon, she has procured permanent housing, almost

finished her college degree, and started a non-profit that serves the unhoused. Jennifer has contributed greatly to improving the understanding of the issues surrounding homelessness in Boulder, particularly those involving high utilizers.

Conclusion

The enforcement of Boulder's camping law attempts to find the balance between criminal sanctions and assisting individuals to end their homelessness. Because the individuals who this law is enforced against suffer from high rates of mental illness, addiction and trauma, enforcement is primarily focused on helping people utilize resources to address the underlying reasons they are camping in the first place. Punitive sanctions, such as jail time, has been limited by the Colorado Legislature and, temporarily, by the pandemic. Until the pandemic is over, the legal system will struggle to function as it is meant to. However, the city of Boulder is a nationwide leader in this difficult area that brings many disciplines together to address the problems associated with unsheltered homelessness. The criminal justice system, especially police and other law enforcement, cannot be expected to solve this problem alone. The dedicated professionals who work in this area recognize the importance of collaboration across systems and will continue to attempt to reduce the impacts of illegal camping while helping individuals access permanent housing solutions.

ⁱ Data from city attorney's office

ⁱⁱ Data from city attorney's office

ⁱⁱⁱ C.R.S. 16-4-113

^{iv} Data from city attorney's office

^v Data from city attorney's office

^{vi} Data from city attorney's office

^{vii} Data from city attorney's office

^{viii} Data from city attorney's office

^{ix} https://www.samhsa.gov/sites/default/files/programs_campaigns/homelessness_programs_resources/hrc-factsheet-current-statistics-prevalence-characteristics-homelessness.pdf

^x <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>

^{xi} <https://assets.bouldercounty.org/wp-content/uploads/2020/06/sheriff-annual-report.pdf>

^{xii} <https://www.denverpost.com/2020/05/04/colorado-mental-health-violations-fines/>

^{xiii} <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833089/>

^{xiv} Health Status and Health Care Experiences among Homeless Patients in Federally Supported Health Centers: Findings from the 2009 Patient Survey, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3681240/>

^{xv} Pretrial Release of Felony Defendants in State Court, <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>

^{xvi} Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court, https://urbanlabs.uchicago.edu/attachments/3b31252760b28d3b44ad1a8d964d0f1e9128af34/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/I42-954_NYCSummonsPaper_Final_Mar2018.pdf

^{xvii} Data from city attorney's office

^{xviii} C.R.S. 16-4-113

^{xix} "A Crisis in Search of Data: The Revolving Door of Serious Mental Illness in Super Utilization," <https://www.treatmentadvocacycenter.org/storage/documents/smi-super-utilizers.pdf>

^{xx} <http://www.csh.org/wp-content/uploads/2011/12/Denver-SIB-FactSheet.pdf>

^{xxi} Data from city attorney's office

^{xxii} Data from city attorney's office

^{xxiii} Data from city attorney's office

^{xxiv} "The Rikers Island Hot Spotters: Defining the Needs of the Most Frequently Incarcerated," *American Journal of Public Health* 105, no.11 (2015) :2262-2268.

^{xxv} Id.

^{xxvi} Id.

^{xxvii} Data from city attorney's office

^{xxviii} <https://www.denverpost.com/2020/11/12/el-paso-county-jail-coronavirus-outbreak-masks/>

^{xxix} Data from city attorney's office



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

City Manager Search Update

PRIMARY STAFF CONTACT

Pam Davis, Assistant City Manager

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Severe Weather Shelter Update

PRIMARY STAFF CONTACT

Vicki Ebner, Program Manager Homelessness Initiatives

REQUESTED ACTION OR MOTION LANGUAGE

Severe Weather Shelter Update

ATTACHMENTS:

Description

- ▣ **Severe Weather Shelter Update**



INFORMATION ITEM MEMORANDUM

To: Mayor and Members of Council

From: Chris Meschuk, Interim City Manager
Kurt Firnhaber, Housing and Human Services Director
Vicki Ebner, Homelessness Policy Manager

Date: January 19, 2021

Subject: Information Item: Severe Weather Shelter Update

EXECUTIVE SUMMARY

The Severe Weather Shelter (SWS) season occurs from October 1 to May 31 each year. Due to the transition of SWS from Bridge House to Boulder Shelter for the Homeless (BSH), impact of COVID-19, and refinement of the SWS criteria to include Critical Weather Conditions, Council requested at the Sept. 22, 2020 meeting that staff provide a mid-season SWS Update in January.

The 2020-2021 SWS program includes the following components:

- Empty beds at BSH are utilized for SWS.
 - Dec.1 – Mar.15, SWS beds are available regardless of weather conditions
 - Oct. 1 – Dec. 1 and Mar. 16 – May 31, SWS beds are available when the 24-hour forecast indicates weather conditions meet SWS weather criteria described below
- Provide beds for high-risk COVID or ill people in the following manner:
 - Nov. 1 – Mar. 31: up to 25 hotel rooms for high-risk individuals
 - COVID-19 Recovery Center (CRC) Beds: Up to 30 beds of respite care
- On Critical Weather Condition nights (an estimated 30 nights between Oct. 1 and May 31), an additional 20 hotel rooms will be provided to COVID-risk persons, for a total of up to 45 rooms
- Extended day services provided at BSH - Between Dec.1 and Mar. 15 extend services until 11:30 a.m. On days when the high temperature is 20°F or below or there is an expected six inches of snow, the shelter will remain open all day.

Critical Weather Conditions are defined as those nights with forecasted low temperatures of 10° F or below and/or there are six inches or more snow expected. Normal SWS conditions are defined as those that meet the traditional thresholds (see “Background”).

Due to COVID-19, SWS responses were put in place to address non-congregate sheltering (hotel stays) for high-risk individuals, establishment of the COVID-19 Recovery Center (CRC) for respite care, and extension of daytime resources.

With the transition of SWS services from Bridge House to BSH, the additional requirements for Coordinated Entry screening and a 30-night limit to SWS services were put into place. This has resulted in increased engagement with the Housing Focused Shelter and Navigation programs and lower numbers of persons being turned away from the facility due to capacity issues.

FISCAL IMPACT

Funding for SWS is provided from the \$1.9 million that was set aside in 2017 for homelessness services. Reimbursement from the Federal Emergency Management Agency (FEMA) is being sought to assist with costs incurred for the CRC and non-congregate sheltering. Costs for Mar. 20 - Dec. 31 CRC operations were covered by Boulder County CARES Act funds. Some non-congregate sheltering costs are being borne by BSH through their Emergency Solutions Grant allocation from the Colorado Department of Local Affairs.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Homelessness services provide opportunities for all segments of the community, particularly the most vulnerable community members, and the long-term focus on housing will improve resiliency for an at-risk population.
- Environmental: Utilizing one space for homelessness services reduces energy and material consumption.
- Social: People experiencing homelessness are traditionally under-represented in the broader community. In addition, homelessness affects persons of color and people who identify as LGBTQ+ disproportionately. The provision of SWS services will not negatively impact this population.

BACKGROUND

Homelessness Services & Program Overview

In Oct. 2017, Boulder partnered with Boulder County and the City of Longmont to form Housing Solutions for Boulder County (HSBC) as part of its overall homelessness strategy.

Considerations for housing and interventions on behalf of adult individuals experiencing homelessness within Boulder County are administered through this collaborative entity. HSBC programs are designed with fidelity to the Housing First Model, a philosophy that centers on providing people with permanent housing without requirements for sobriety or completion of other programs prior to securing housing. Housing First recognizes that a person can more successfully address other aspects of one's well-being (i.e., employment, health, mental health, education, addiction) once they are stably housed. Particularly with programs such as Permanent Supportive Housing (PSH), tenants are provided with the intensive case management and wrap-around services needed for them to be successful in housing.

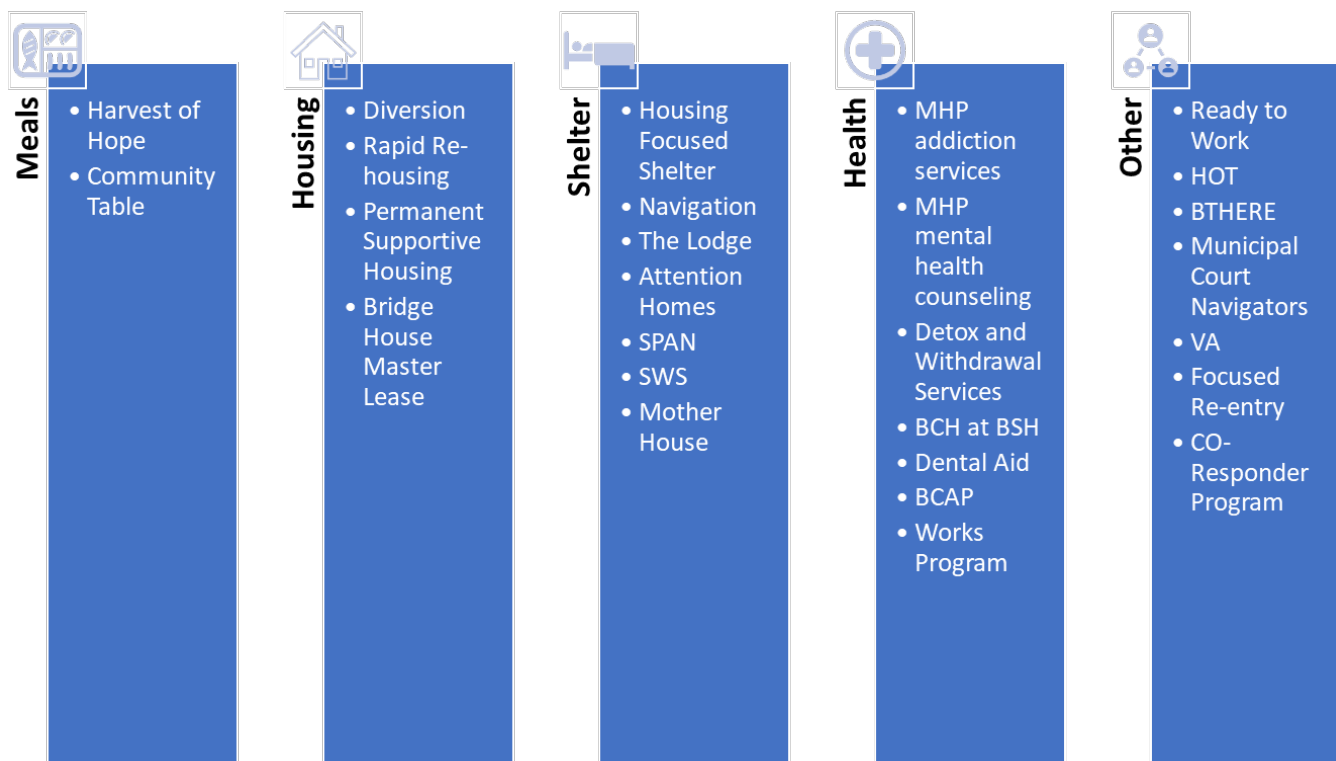
The City of Boulder Homelessness Strategy and HSBC embrace the Housing First Model in their key homelessness services, listed below in Exhibit 1.

Exhibit 1: Key Homelessness Services

Service	Brief Description	Boulder County Residency Requirement	Population Served
Coordinated Entry (CE)	Initial client screening for client access to sheltering and programs using a common assessment tool.	None	All single adults experiencing homelessness
Diversion Services	Helps people avoid entering the shelter system or long-term homelessness. Addresses immediate crises through problem solving and limited financial assistance. Guides clients to resources or supports, including helping them access other services such as family reunification, mediation, mental health services, transportation, or other services which meet their needs.	None	Open to all levels of Boulder County residency, but it is the primary service intervention for people who have not been Boulder County residents for six months or longer.
Navigation Services	Designed to quickly resolve a person's homelessness with short term case management and sheltering.	Six or more months	Designed for individuals who do not have disabling conditions and do not have significant barriers to housing (i.e., newly experiencing homelessness, ability to obtain employment);
Housing Focused	Sheltering with significant case management and services to support	Six or more months	Designed for individuals with disabling conditions

Shelter (HFS)	basic needs, meet health care needs, and assist clients in exiting homelessness into housing. Clients may have access to reserved beds until housed.		and who have significant barriers to housing stability
Severe Weather Shelter (SWS)	Basic, life-safety sheltering during inclement weather. Persons who wish to utilize SWS are required to go through CE (with grace night provided) and can use the service for 30 nights.	None	All people experiencing homelessness who have been screened through CE but are not currently engaged with a program
Non-Congregate Shelter (NCS)	Protective shelter as a response to COVID-19. This is provided through hotel stays and was approved by the Federal Emergency Management Agency (FEMA) in April 2020 for this purpose.	None	People experiencing homelessness who are at high risk of COVID-19 through age, underlying health conditions, etc.
COVID-19 Recovery Center (CRC)	A non-medical facility for people experiencing homelessness to recover and rest whether they are symptomatic or positive for COVID-19. This includes referrals from shelters, hospitals, clinics, outreach, or other locations frequented by people experiencing homelessness.	None	People experiencing homelessness who are symptomatic or ill with COVID-19 but do not require hospitalization; people who are housed, ill, in need of isolation, and have no resources.

Exhibit 2: Additional Homelessness Services



Transition of Services

As part of a long-term plan to allocate resources toward housing initiatives, the lease at 2691 30th Street (“30th Street”) terminated on May 31, 2020. Always meant to serve as a temporary location, 30th Street housed the SWS and Path to Home Navigation (PTHN) programs run by Bridge House. In Fall 2019, HSBC conducted a Request for Proposals process for the provision of Navigation, Coordinated Entry, and Diversion Services. BSH was the only applicant for Boulder services and was awarded the contracts for these programs. In addition, BSH agreed to administer SWS for the 2020-2021 season. Navigation Services transitioned to the BSH facility on June 1, and the SWS season began on Oct. 1.

Council approved the consolidation of sheltering resources to allow for a corresponding increase in Permanent Supportive Housing (PSH) investment on Mar. 19, 2019. As the operation of a separate facility for SWS and Navigation amounted to over \$1.1 million, net savings from this funding were reallocated to provide an additional \$769,875 in locally funded housing (PSH, Bridge House Master Lease). Staff provided Council with frequent trend analysis to support the decision for consolidation of sheltering services throughout 2019 and early 2020. Current conditions indicate that the trends toward housing high utilizers of the HSF program and the implementation of the Diversion Services program have allowed for the integration of the Navigation Services program and SWS into the existing bed capacity of BSH. As a result of Council’s concerns related to this transition of services, a [SWS dashboard](#) was set up that is updated five days a week and is available to the public on the City’s web site. Below is a screen shot of the SWS Dashboard.

Exhibit 3: Sheltering System Capacity and Usage Oct.1-Dec. 31



Between Oct.1 and Dec. 31, there has been an average of 31 unused shelter beds per night across all programs, not including those provided by the CRC.

Severe Weather Planning

During the prior two SWS seasons, SWS was open on a weather-triggered basis, based on a National Weather Service (NWS) forecast of:

- Warning or Watch for winter weather, winter storm, blizzard, extremely cold/wind chill, heavy snow, ice storm; or
- Temperature of 32°F or below; or
- Temperature of 38°F or below with a 30% likelihood of precipitation predicted

In January 2020, Council approved the opening of SWS every night between Jan. 23 and Mar. 31, 2020, regardless of weather conditions. This was extended in April and May as part of COVID response, primarily due to COVID-related limited capacity at BSH.

For the 2020-2021 SWS season, opening was to be determined in the following manner:

- Oct.1 – Nov. 30: SWS was available when the 24-hour NWS forecast indicated weather conditions meeting the criteria listed above
- Dec.1 – Mar. 15: SWS is available each night, regardless of weather conditions
- Mar. 16 – May 31: SWS beds will be available on a weather-triggered basis

Exhibit 4: SWS System Capacity

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Shelter Capacity	140	140	140	140	140	140	140	140
Most Vulnerable to Hotels		20	25	25	25	25		
CRC	30	30	30	30	30	30	30	30
SWS Hotel Expansion*	20	20	20	20	20	20	20	20
Total Beds	190	210	215	215	215	215	190	190

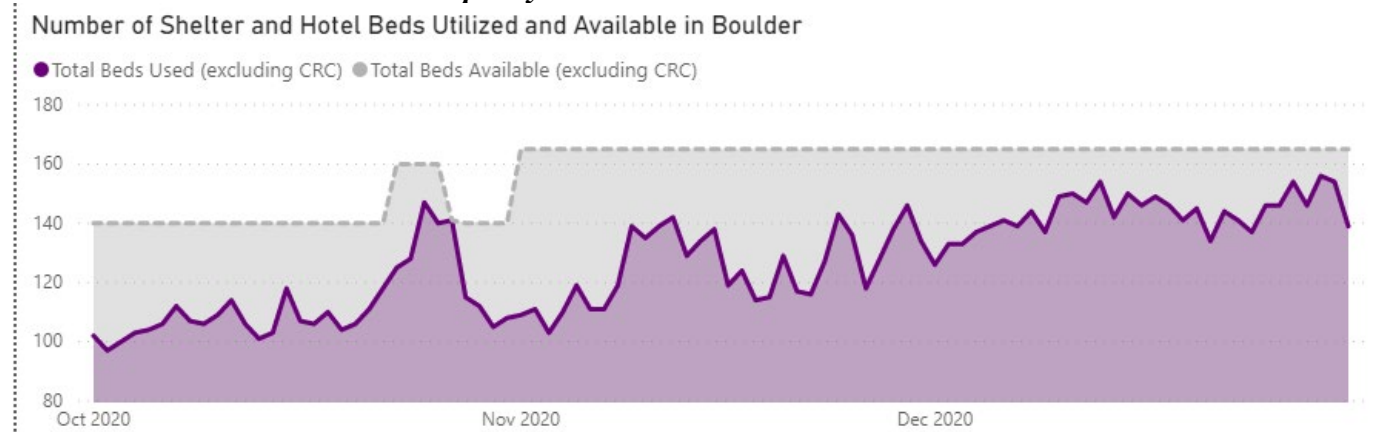
* Nights meeting Critical Weather Conditions

In addition to the 140 beds provided at BSH across all programs and SWS, the State of Colorado approved for the use of up to 25 regular, non-congregate sheltering (i.e., hotel rooms) units to be put in place for BSH regular residents who are deemed to be at high risk of contracting a severe case of COVID-19. On nights that reach critical weather conditions, an additional 20 non-congregate units are also provided. The CRC also has the capacity to provide nightly service to up to 30 people who need such services. Between Dec.1, 2020, and Mar. 15, 2021, BSH will remain open until 11:30 a.m. daily and will continue to provide daily morning services (showers, meals). On days where the forecasted high is expected to be 20°F or lower and/or 6” or more of snow is forecasted, BSH will remain open all day. This is due to the lack of public gathering spaces due to the pandemic (e.g., the library). Rationale for the use of this criteria was provided as part of the Sept. 22, 2020 Council Study Session.

ANALYSIS

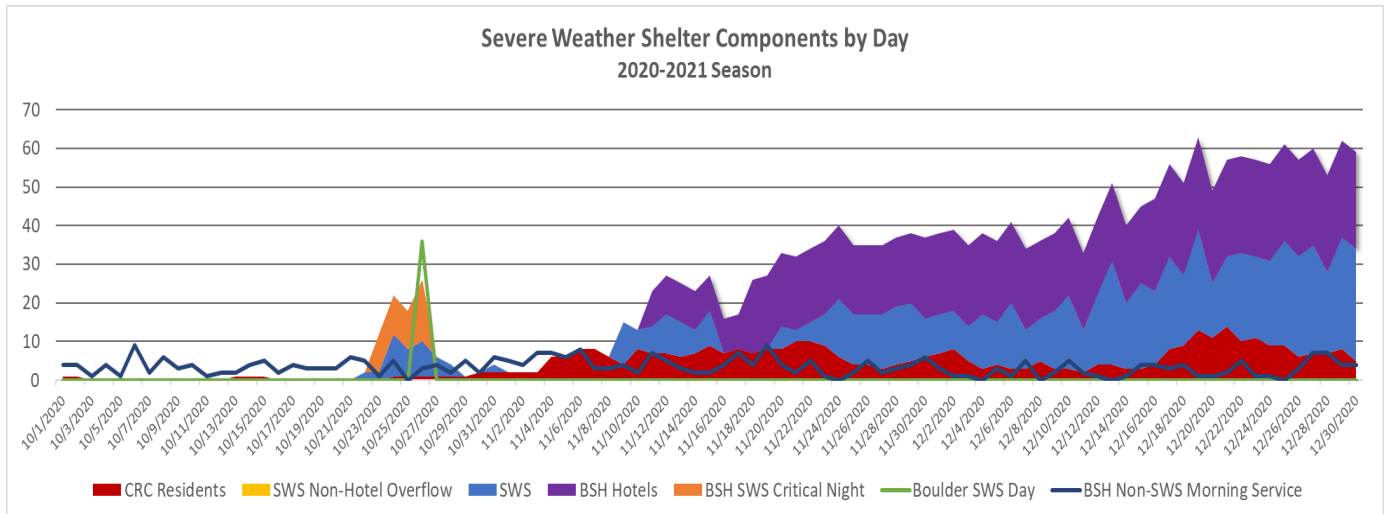
Since Oct.1, there have been three people turned away from shelter due to capacity issues and occurred prior to full implementation of the SWS program. Capacity at the BSH facility has generally been underutilized.

Exhibit 5: BSH Census Versus Capacity



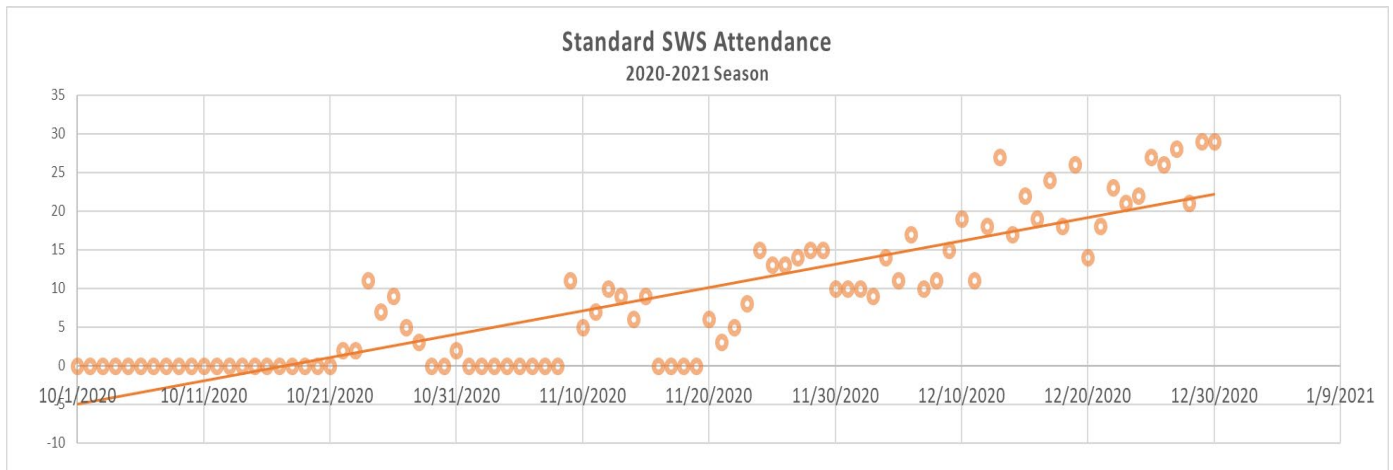
Of note is the low number of people using SWS, compared to prior years. This is mainly due to the requirement that all people accessing SWS in the 2020-2021 SWS season be screened through Coordinated Entry (CE) following a grace night. As a result of requiring CE, there are less people in SWS and a higher percentage of people using SWS move directly into services and are no longer SWS clients.

Exhibit 6: Severe Weather Shelter Components



**Non-Congregate Shelter = hotel rooms dedicated to protecting shelter residents at high risk of COVID-19*

Exhibit 7: Standard SWS Attendance



COVID-19 Impact and Planning

The City established the COVID-19 Recovery Center (CRC) on Mar. 20 to provide respite services for people experiencing homelessness. Through the continued actions of the shelter system, usage of the CRC has remained low. In addition, the number of people testing positive for COVID-19 is also low, with 64% of the people testing positive coming from locations outside of the shelter system. While the CRC saw a significant increase in the number of people residing in the CRC and those testing positive during the months of November and December, the peak residency was 14 people on Dec. 21. Usage during the first three weeks of December has stabilized to an average of 6 persons per night. A [dashboard](#) was designed in November to provide additional information regarding CRC and SWS residency and attendance.

Exhibit 8: CRC Residency and Exits Mar. 20 – Dec. 31

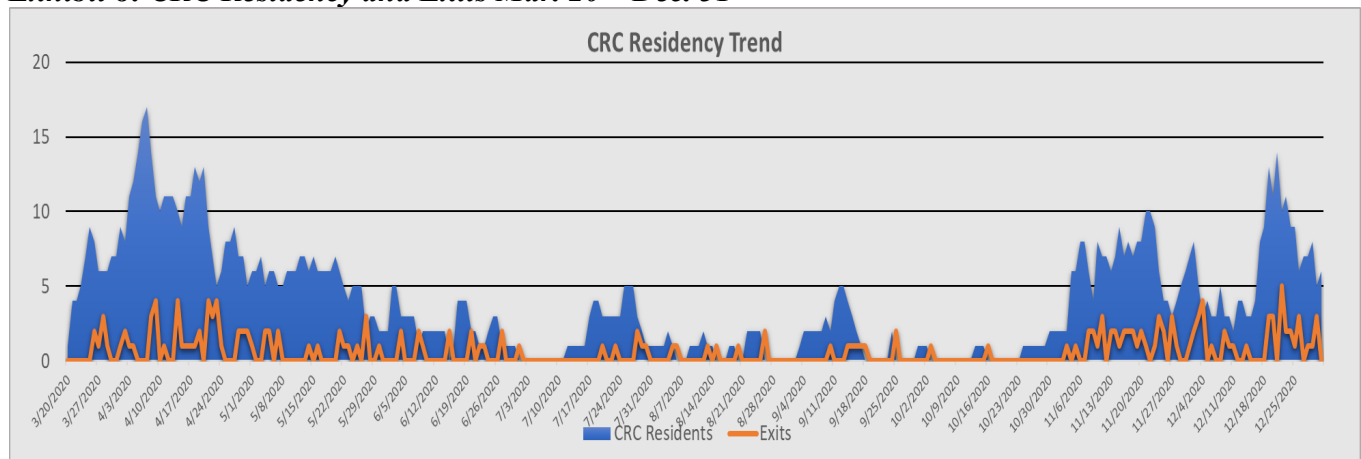
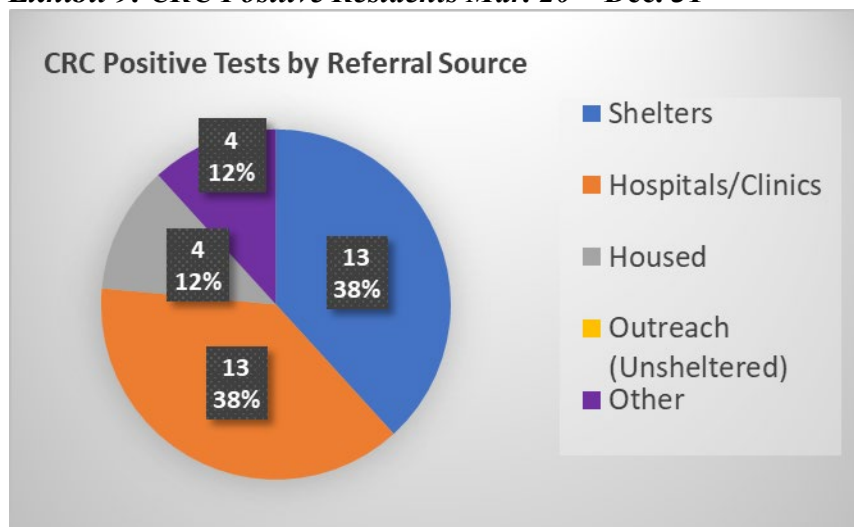


Exhibit 9: CRC Positive Residents Mar. 20 – Dec. 31



The establishment of morning services and extended daytime hours, along with opening SWS every night between Dec. 1 and Mar. 15 are also related to COVID-19 response.

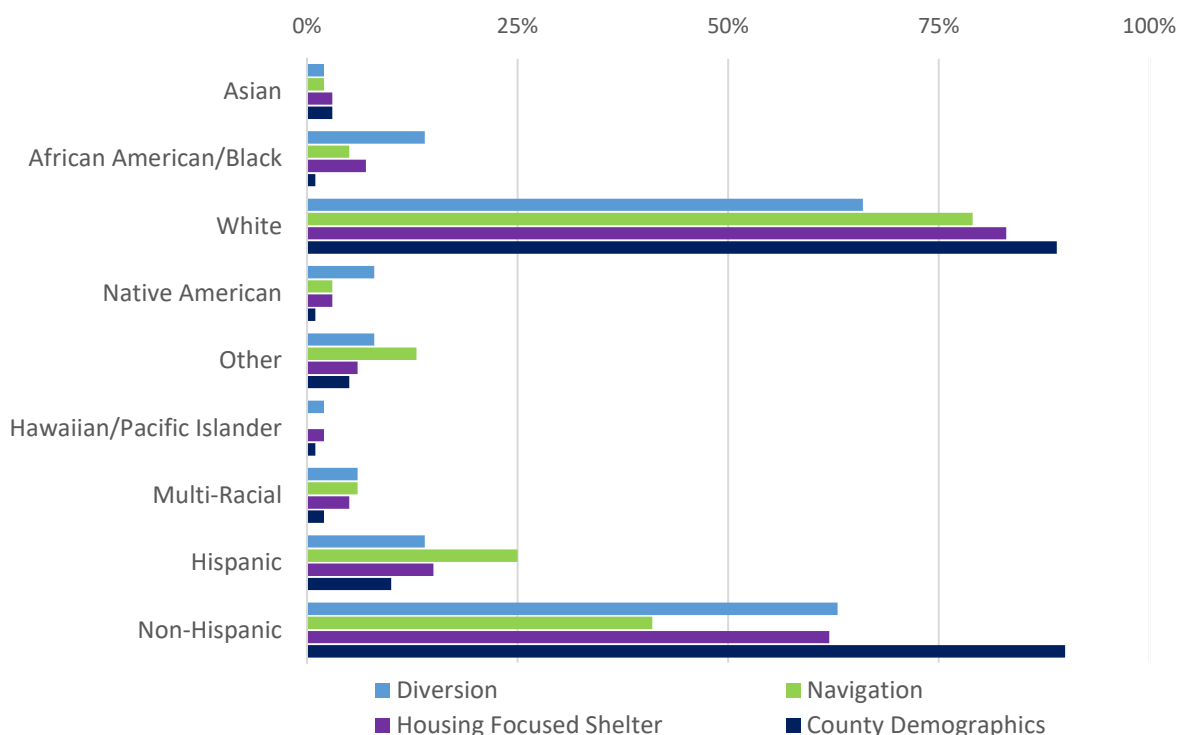
As part of an award of Colorado Department of Local Affairs Emergency Solutions Grant – Coronavirus (ESG-CV) funds, the city is also supporting three portable toilets during the winter months, while certain key locations are closed for winterization.

Racial Equity

In recent years, regional work around homelessness has incorporated solutions through an explicit racial equity lens. The Continuum of Care (CoC) lead agency, Metro Denver Homeless Initiative (MDHI), and the National Innovation Service (NIS) hosted a multi-day racial equity summit in Fall 2019, in which partners across the region learned and worked towards system transformation with racial equity at the center of the process. Also in 2019, the MDHI Equity and Accessibility Committee published [racial equity recommendations](#) for the MDHI Board of Directors and CoC. As a participant of the CoC, HSBC has incorporated many of these recommendations in its housing work.

Locally, HSBC has been looking closely at racial disparities among homelessness programs. In the December 2020 report to the HSBC Executive Board, it was reported that across the systems, individuals who do not identify as White are overrepresenting in the population experiencing homelessness and accessing the Coordinated Entry System (See Exhibit 10). This translates to a higher percentage of individuals of color being served through homelessness programs than are represented in the overall community. When looking at each program and its referrals, individuals who identify as Asian or Hawaiian/Pacific Islander are the *least* overrepresented racial group. Whereas individuals who identify as African American/Black, Multi-racial, other, and Hispanic are racial and ethnic groups who are overrepresented across programs.

Exhibit 10: 2020 Annual Averages of Program Referrals by Race and Ethnicity, Compared to County Demographics



Additionally, HSBC and Mental Health Partners (MHP) were awarded \$2.4 million in SAMHSA (Substance Abuse and Mental Health Services Administration) funds to begin the Boulder County Permanent Housing Supports (BCPHS) program in 2018. The program is targeted to work with people experiencing chronic homelessness to obtain and maintain stable housing; services include case management, housing navigation, and behavioral health treatment.

In a November 2020, HSBC reported the following regarding current rates of enrollment in the SAMHSA program:

- A lower than population rate of Hispanic/Latinx clients
- A much higher rate than population rate of Black/African American and American Indian/Alaskan Native clients
- A slightly above population rate of multi-racial clients
- A resulting lower population rate of whites.

BTHERE

Boulder Targeted Homelessness Engagement and Referral Effort (BTHERE) is a partnership between the City, Attention Homes, and Mental Health Partners (MHP). BTHERE's goal is to engage with and build relationships with persons experiencing homelessness for future connection to housing or services, by providing more "eyes on the streets" in key locations, promoting compliance with ordinances, encouraging "good community member", connecting persons experiencing homelessness to Coordinated Entry and other resources, and providing COVID-19 symptom screening and education. The BTHERE team follows best practices in harm reduction, trauma-informed care, and motivational interviewing.

In a soft launch this last Fall, Attention Homes has been conducting street outreach Tuesday mornings and Thursday afternoons. Attention Homes averages 83 interactions per week, with 21 referrals to CE. The BTHERE Team will use the Homeless Management Information System (HMIS) to track engagement and services and will provide monthly reports on the following items: number of encampments identified, number of unique persons contacted, number of interactions with specific individuals, location of interaction, demographic information, referral connections, and additional data required by the Emergency Solutions Grant (ESG).

The BTHERE Team consists of four crucial positions: a street outreach manager, an outreach worker with professional experience, an outreach worker with lived homelessness experience, a mental health worker (hired by MHP). The street outreach manager was hired in mid-November. Both Attention Homes and MHP are in the process of hiring the three remaining positions with the plan to conduct outreach as an established team in late January 2021.

Deaths

During the first few months of the 2020-2021 winter season, two deaths of people experiencing unsheltered homelessness were widely reported within the community. While any death in the community is tragic, in both cases the people had access to sheltering, had other complicating issues, and had been periodically or continuously engaged with housing efforts. Further information related to the deaths of people experiencing homelessness is expected in Summer 2021 with the publishing of the Boulder County Coroner's Report. If a Coroner's report is available sooner, we will assist in making this public.

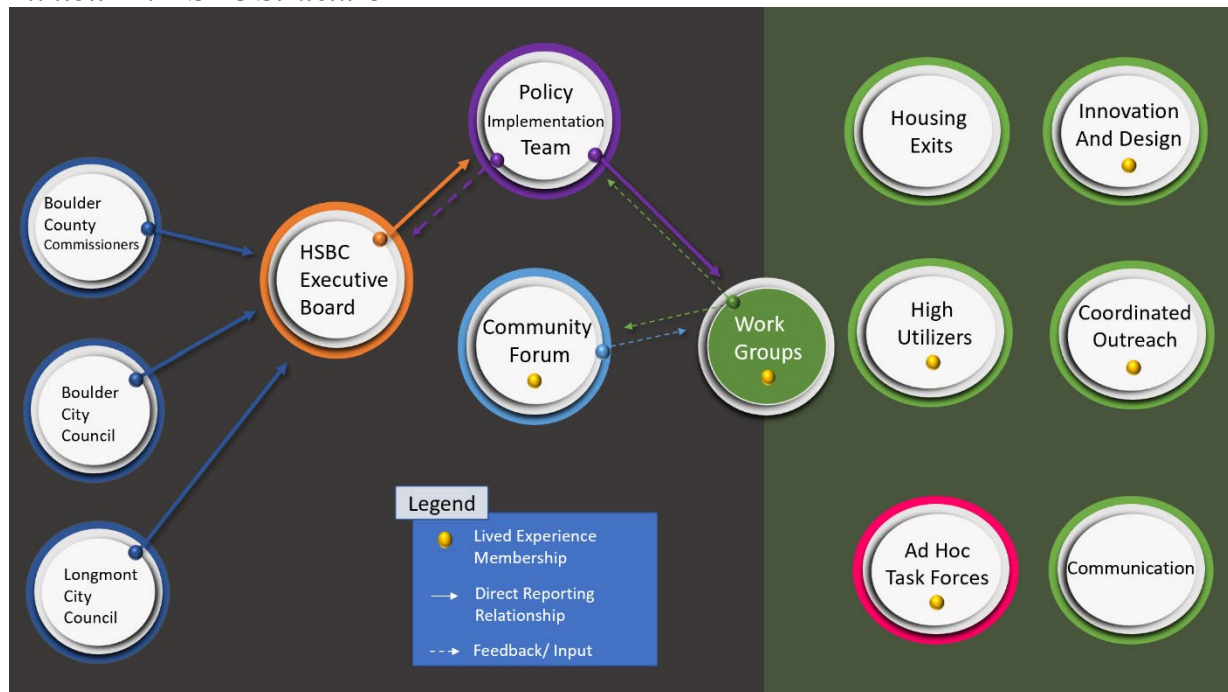
HSBC Restructure

At the Dec. 11, 2020 meeting, the HSBC Executive Board approved a restructure of work groups to improve the voice of people with lived experience. As part of this work, a new work group, Innovation and Design, was established to investigate and research new ideas for alignment with existing strategies, cost-benefit analysis, and fidelity to Housing First.

These changes were made following a lengthy review and input-seeking process. The HSBC structure was improved to facilitate work groups and improve information sharing. The new structure focuses heavily on the inclusion of lived-experienced voices, particularly within the Innovation and Design group and several key work groups such as Outreach and task forces such as Sober Living. To help ensure participation, HSBC is developing a stipend program for people with lived experience for continued participation in key workgroups.

Exhibit 11 provides a graphic representation of the new structure and highlights work groups with lived experience interactions.

Exhibit 11: HSBC Structure



NEXT STEPS

The 2020-2021 SWS season has, to date, met the challenges of COVID-19 and severe weather. The team of city/county staff and nonprofit organizations tasked with the provision of emergency and respite services in a pandemic environment have been able to control the spread of COVID-19 within the highly vulnerable unhoused community and have maintained adequate SWS capacity. Staff continues to monitor conditions and make changes and improvements as warranted.



COVER SHEET

MEETING DATE

January 19, 2021

AGENDA ITEM

Shared E-scooter Program Boundaries Update

PRIMARY STAFF CONTACT

David "DK" Kemp, Senior Transportation Planner, GO-Boulder

ATTACHMENTS:

Description

- ▣ **Shared E-scooter Program Boundaries Update**



INFORMATION ITEM MEMORANDUM

To: Mayor and Members of Council

From: Chris Meschuk, Interim City Manager
Erika Vandenbrande, Director of Transportation and Mobility
Natalie Stiffler, Deputy Director of Transportation and Mobility
Chris Hagelin, Acting GO Boulder Manager
Dave “DK” Kemp, Senior Transportation Planner

Date: January 19, 2021

Subject: Information Item: Staff briefing regarding Shared E-scooter Program Operational Boundaries

EXECUTIVE SUMMARY

The purpose of this memo is to provide an update regarding the development of the city’s Shared Micromobility Program, including the proposed boundaries for the operation of shared e-scooters, the performance measures that will be used to evaluate the Shared Micromobility Program for both e-bikes and e-scooters, and the revised timeline to develop and launch the new program in 2021.

In coordination with CU Boulder and the Boulder Chamber, and direction given by City Council, staff has created a map illustrating the proposed boundaries for shared e-scooter operations. Shared e-scooters will be limited to the area shown in **Attachment A**. Staff will use a set of performance measures, identified below, to gauge the efficacy of the program and will return to TAB and City Council in January 2022 to share the full results of the one-year study period. During the one-year study period, staff will provide TAB and City Council quarterly briefings regarding the progress of the overall Shared Micromobility Program.

Staff has modified the Shared Micromobility Program timeline to reflect the interest of CU Boulder to avoid a gap in shared micromobility service for CU students during the spring 2021 semester. The transition of the Shared Micromobility program is expected to

take place summer 2021. CU Boulder and the City of Boulder has developed a cost share agreement to maintain Boulder Bike Share/B-Cycle operations through August 2021.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Allows the entry of commercial e-scooter companies into the City of Boulder.
- Environmental – There is a debate regarding whether e-scooters provide an environmental benefit or detriment.
- Social – Analysis of e-scooter operations will bring to light new information regarding areas of concern, including safety, mode shift, sustainability and equity.

OTHER IMPACTS

- Fiscal – The work necessary will be performed using existing budget resources.
- Staff times – Work will be completed within staff's existing work plan.

BOARD AND COMMISSION FEEDBACK

The Transportation Advisory Board (TAB) provided feedback at the January 11, 2021 meeting. TAB acknowledges the operational boundaries of the shared e-scooter program and sees the opportunity to serve multiple traditionally underserved neighborhoods, employment centers and shopping centers. TAB also recognizes the constraints associated with the proposed boundaries and the inability to serve more parts of Boulder in the first year of operations, albeit shared e-bike will be accessible throughout the city. TAB is concerned about the operational safety of e-scooters as it relates to the condition of facilities, such as streets, bike lanes and sidewalks. Providing community members with information regarding “preferred routes” may be helpful in directing people to use a particular route over another.

BACKGROUND and ANALYSIS

At the September 15, 2020 City Council meeting, council provided direction to include shared e-scooter devices, along with shared, electric-assist bicycles to comprise the city's Shared Micromobility Program. Council added the requirement that shared e-scooters should only be offered east of 28th Street (US36). Since then, staff has created a map illustrating the proposed boundaries. At the October 27, 2020 City Council Study Session, council supported staff's recommendation to conduct a market-based Request for Proposal (RFP) process to receive and evaluate proposals from shared micromobility operators and to select an operator(s) to provide services for the Boulder community.

In coordination with community stakeholders, including CU Boulder and the Boulder Chamber, staff has determined proposed boundaries for shared e-scooter operations – **Attachment A**. The northern, southern and eastern most boundary of the e-scooter operational area is designed to include several important land-uses that are relevant to the utilization of shared micromobility services, including traditionally underserved neighborhoods and employment centers, transit stations, and activity centers.

In question, are CU Boulder's East Campus and Williams Village Residence Hall. CU Boulder staff is coordinating internally to determine whether shared e-scooters will be allowed on or near its properties and is expected to provide city staff direction in mid-February on whether to include these properties in the shared e-scooter program. CU Boulder plans to allow shared e-bikes on all campus property within Boulder.

The Boulder Junction Access District (BJAD) is also included within the boundary area. If a new operator is selected, BJAD's Transportation Demand Management program will need to be modified to accommodate a new shared micromobility platform.

In addition to creating the proposed shared e-scooter boundary map, staff has also been coordinating with community stakeholders to identify performance measures that will be used to evaluate the overall Shared Micromobility Program on a quarterly basis and to help staff and the operator(s) refine the program to ensure optimal performance. The evaluation includes both the operation of shared e-bikes and shared e-scooters. The following is a draft list of the performance measures:

- Overall micromobility utilization (Total number of trips and number of unique users)
- Safety (crash and close call reports)
- Equity impact – affordability program utilization
- Characteristics of riders (demographics)
- Micromobility usage patterns
 - Real time device location
 - Frequency and locations of trip origins and destinations
 - Frequency of use (comparatively between devices)
 - Trips by time of day
 - Trips by day of the week
 - Impact of precipitation and temperature (weather)
 - Trips per device per day
 - Average trip length/duration
- Compliance by vendors– indicates the management of the program
 - Responsiveness to agency requests
 - Device availability (rebalancing/deployment obligations)

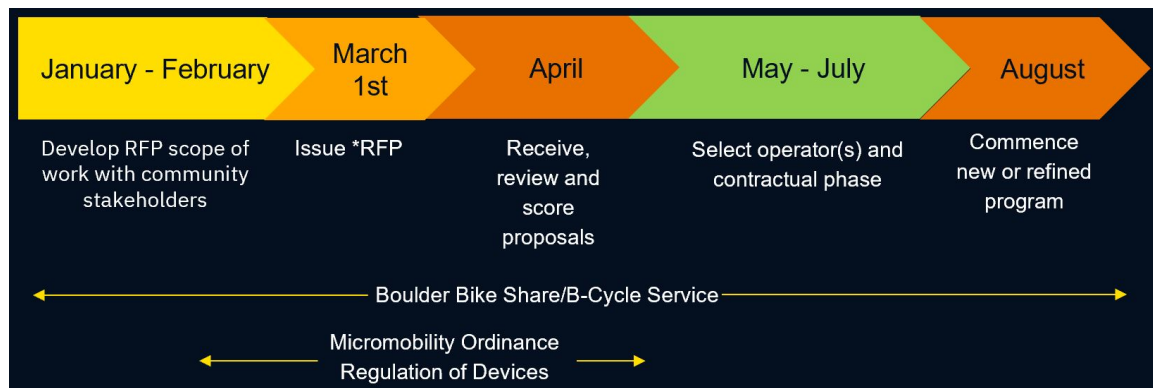
- Number of and response times to complaints
 - Improperly parked devices
 - Abandoned devices
 - Malfunctioning devices
- On-Street/Sidewalk/Multi-use path micromobility observations

Staff has revised the overall timeline to develop and launch the new Shared Micromobility Program. CU Boulder expressed concern that a transition to the current program may incur a potential gap in micromobility service while CU's spring semester is in session. In response, staff has moved the release date for the RFP to March 1st. This change in schedule also allows for additional time for engagement with TAB and other stakeholders to review and provide input to the RFP scope of work.

This change in timeline has also prompted CU Boulder and the Transportation and Mobility Department to determine a cost-share arrangement to maintain Boulder Bike Share/B-Cycle operations through May 2021.

Staff anticipates conducting the contractual phase with a new selected operator(s) between May – July with the goal of commencing a new or refined program in August.

The revised timeline below illustrates the development and next steps for the Shared Micromobility Program.

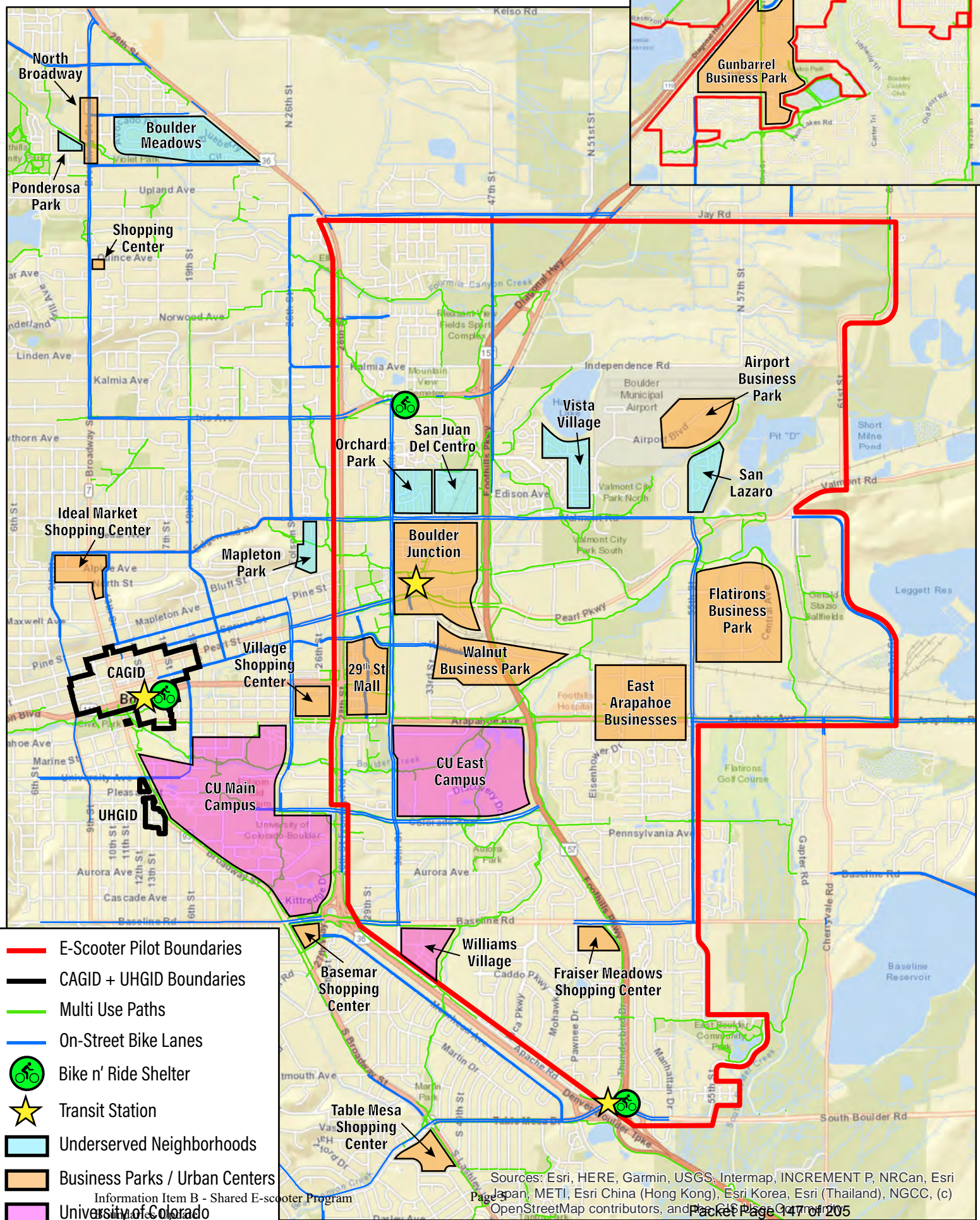


ATTACHMENTS

Attachment A - Proposed Shared E-scooter Boundaries Map

E-Scooter Boundaries

Gunbarrel Inset





COVER SHEET

MEETING DATE

January 19, 2021

INFORMATION ITEM

2020 Transportation Report on Progress

PRIMARY STAFF CONTACT

Allison Crump, Transportation Planner

Amy Lewin, Senior Transportation Planner

ATTACHMENTS:

Description

- ▣ **2020 Transportation Report on Progress**



INFORMATION ITEM MEMORANDUM

To: Mayor and Members of Council

From: Chris Meschuk, Interim City Manager
Erika Vandenbrande, Director of Transportation and Mobility
Bill Cowern, Deputy Director of Transportation and Mobility
Natalie Stiffler, Deputy Director of Transportation and Mobility
Amy Lewin, Senior Transportation Planner
Allison Crump, Transportation Planner

Date: January 19, 2021

Subject: Information Item: 2020 Transportation Report on Progress

EXECUTIVE SUMMARY

The purpose of this item is to transmit the 2020 Transportation Report on Progress on behalf of the Transportation and Mobility Department. The report is developed every two years and reflects the progress—operationally and from a data perspective—in meeting the vision and goals laid out in the community’s [Transportation Master Plan](#) (TMP). The report is included as **Attachment A**.

FISCAL IMPACT

This report does not require or request any additional funding.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: This report tracks performance related to the Transportation Master Plan which seeks to ensure economic vitality through the efficient movement of people and goods.
- Environmental: This report tracks performance metrics related to the reduction of greenhouse gas emissions as part of the city’s Transportation Master Plan.
- Social: This report tracks the city’s efforts to advance social and racial equity as related to the Transportation Master Plan.

BACKGROUND

Boulder's [Transportation Master Plan \(TMP\)](#) guides the city's multimodal transportation system, including policies, programs, and investment priorities. The TMP is formally updated every five years. In the spirit of continuous improvement, every two years the city analyzes the data and publishes a [Transportation Report on Progress](#). The last report was published in 2018. The Transportation Advisory Board has been instrumental in the development of the 2020 Transportation Report on Progress. In addition, the report reflects feedback from several community organizations.

ANALYSIS

The 2020 report focuses on the challenges we faced and progress we have made since the 2018 Transportation Report on Progress. Given the COVID-19 pandemic impacts to the community and the resulting 20% reduction in funding for the Transportation and Mobility Department, staff have adapted our services to emphasize safety and maintenance of our existing resources. The report includes a 2020 Snapshot of the Measurable Objectives in the TMP, most of which have specific targets for the year 2030. Of the 13 measures, two have met or are on track to meet their respective 2030 target, three are stable but not on track, and four are trending in the wrong direction and are not on track. Four are new/updated measures for which we don't yet have data to assess a trend.

NEXT STEPS

Moving into 2021 and beyond, the Transportation and Mobility Department will continue to implement the action items outlined in the TMP to meet the goals. Some of the key projects already in motion include:

- Implementing the Vision Zero Action Plan (VZAP)
- Partnering on regional multi-modal corridors
- Improving transit fare and pass options, including the EcoPass
- Upgrading traffic signal communication infrastructure
- Constructing key projects, including improvements on North Broadway, the 30th Street/Colorado Underpass and 19th Street

We recognize the need to develop innovative solutions as we take into account the changing landscape of how people will travel in a post-pandemic world. As a city, we are resilient in the face of adversity. And as staff, we will continue to maintain and improve our existing system, working diligently to make the built environment safer and more equitable for all residents.

ATTACHMENTS

Attachment A - 2020 Transportation Report on Progress



2020

BOULDER

Transportation Report on Progress

1/11/2021



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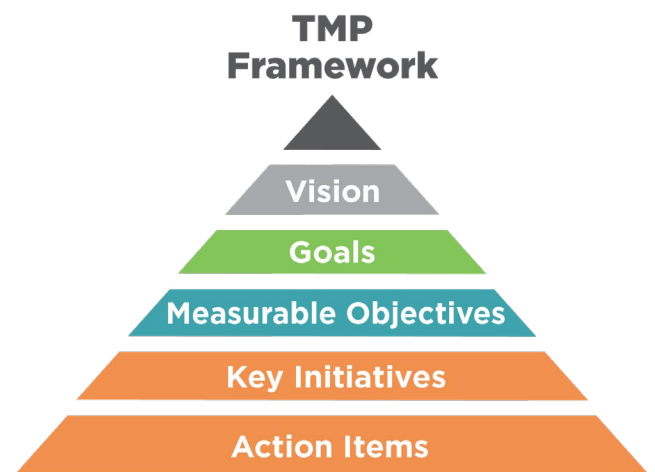
This report contains [links](#) to additional information located on city and partner agency web pages. Readers of a printed version of the report are encouraged to visit www.BoulderColorado.gov/Transportation to view a digital version.

Introduction

Transportation Master Plan (TMP) Framework

Every five years, the city updates the Transportation Master Plan (TMP) which is the Boulder community's transportation blueprint. The TMP outlines our transportation **vision, goals, and objectives** and defines our policies, programs, core services, and investment priorities. A critical element to the successful implementation of the TMP is to track and report on our progress. Every two years, the city produces the Transportation Report on Progress to formally document this assessment. The 2020 report focuses on the **challenges we face and progress we have made** since the 2018 Transportation Report on Progress.

Boulder's transportation vision is to create a **safe, accessible and sustainable** multimodal transportation system connecting people with each other and where they want to go. Boulder continues to be a national leader in the field of transportation. While we have numerous travel options in and around our community, we can do more to enhance our multimodal transportation system for all users. The progress showcased in this report is the culmination of the work of four transportation divisions: **Operations, Maintenance, Capital Projects and Planning**. In early 2020, the City of Boulder's Public Works Department became two different departments to better serve the community: the Transportation and Mobility Department and the Utilities Department.



Centered around five primary goals, this report aims to share the progress that has been made toward our TMP goals with the Boulder community. We evaluate the progress on these broader goals with eight measurable objectives. In line with these goals and objectives, we established 10 key initiatives in the 2019 TMP as well as action items under each initiative that guide the department's work plan. See the [Progress Toward TMP Vision and Goals](#) section for more details.

Subsequent sections of this report include:

- A summary of the department's essential services, with a focus on the maintenance of transportation facilities and key construction projects
- A snapshot of the measurable objectives to assess progress toward targets
- Updates on the various goals, objectives, initiatives, and action items, including highlights of recent projects

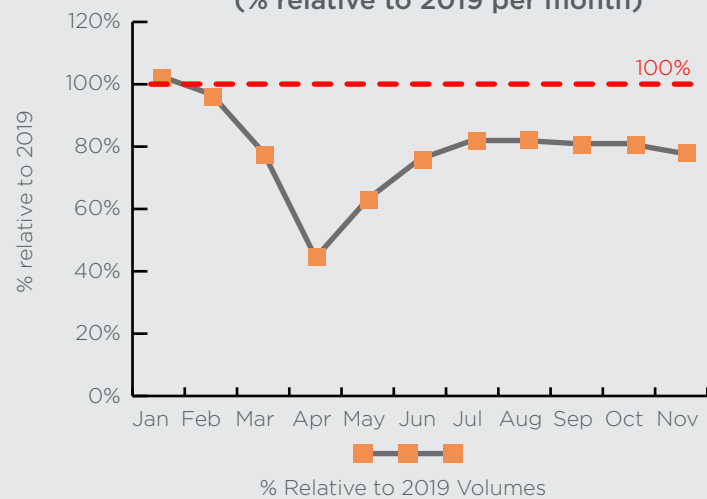


Impact of COVID-19

The COVID-19 pandemic has impacted nearly every aspect of our society, including transportation and mobility. As we highlight accomplishments and challenges in this report, it is important to acknowledge the extent to which the pandemic has affected transportation, ranging from significantly reduced transit service and ridership to reductions in funding for transportation. For the City of Boulder specifically, the Transportation and Mobility Department **lost 20% of its funding** (approximately \$4.5 million) in 2020, as well as several staff positions, as a direct result of the reduction in sales tax revenue due to the pandemic. These budget impacts will continue into 2021. While challenges remain, the city is continually adapting to these disruptions. From creatively morphing roads into “streeteries” for outdoor dining and Shared Streets for recreation, to seeking grants to support older adults’ mobility needs, to focusing on our maintenance and safety priorities, staff are pivoting our services to meet the needs and goals of our community.

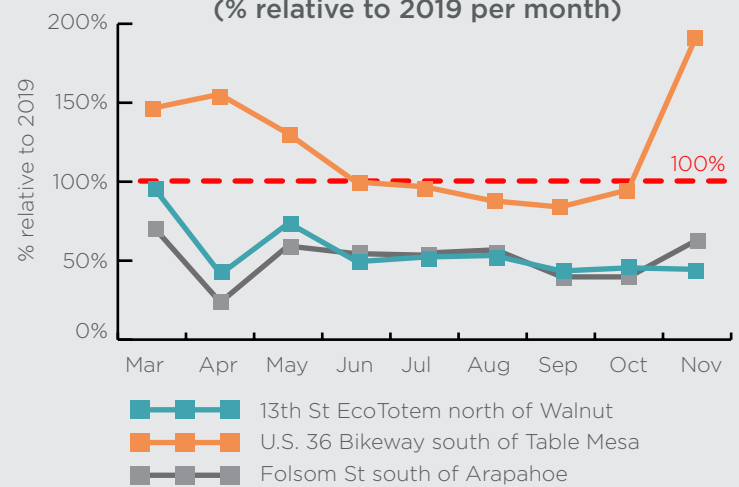
Transportation Data under COVID-19

2020 Motor Vehicle Traffic Volumes
(% relative to 2019 per month)



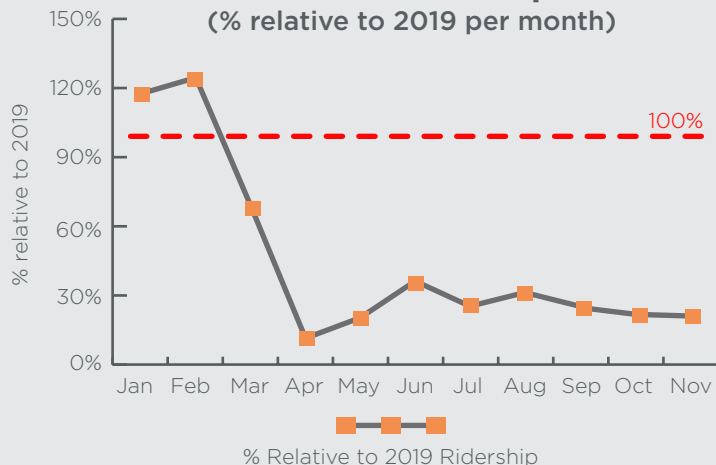
Traffic volumes have decreased overall under COVID-19 conditions. The biggest dip in motor vehicle traffic volumes was in April (44% of 2019 levels), during Stay at Home order. Traffic volumes have generally stabilized around 80% of 2019 levels.

2020 Bike Volumes
(% relative to 2019 per month)



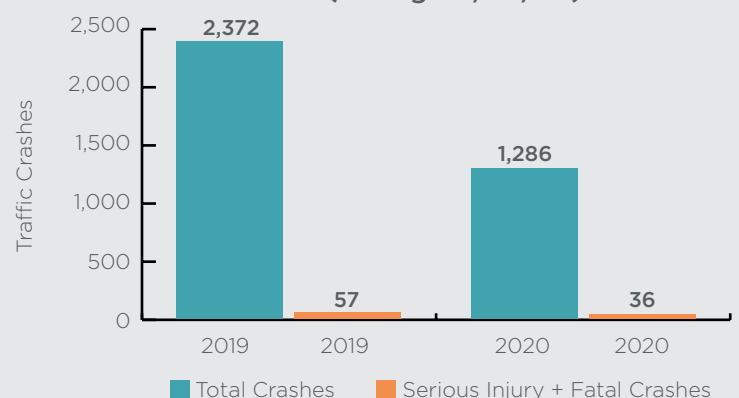
Bike volumes on 13th Street and Folsom Street have declined to about 50% of 2019 levels during COVID-19. US 36 bike volumes have varied from over 80% of 2019 levels to nearly 200%.

2020 HOP Ridership
(% relative to 2019 per month)



Since April, HOP service has been operating at about 75% of pre-COVID-19 service levels, with ridership around 20-25% of pre-COVID-19 levels. RTD has been operating at about 60% of pre-COVID-19 service levels, with ridership trends at 30-40% of pre-COVID-19 levels.

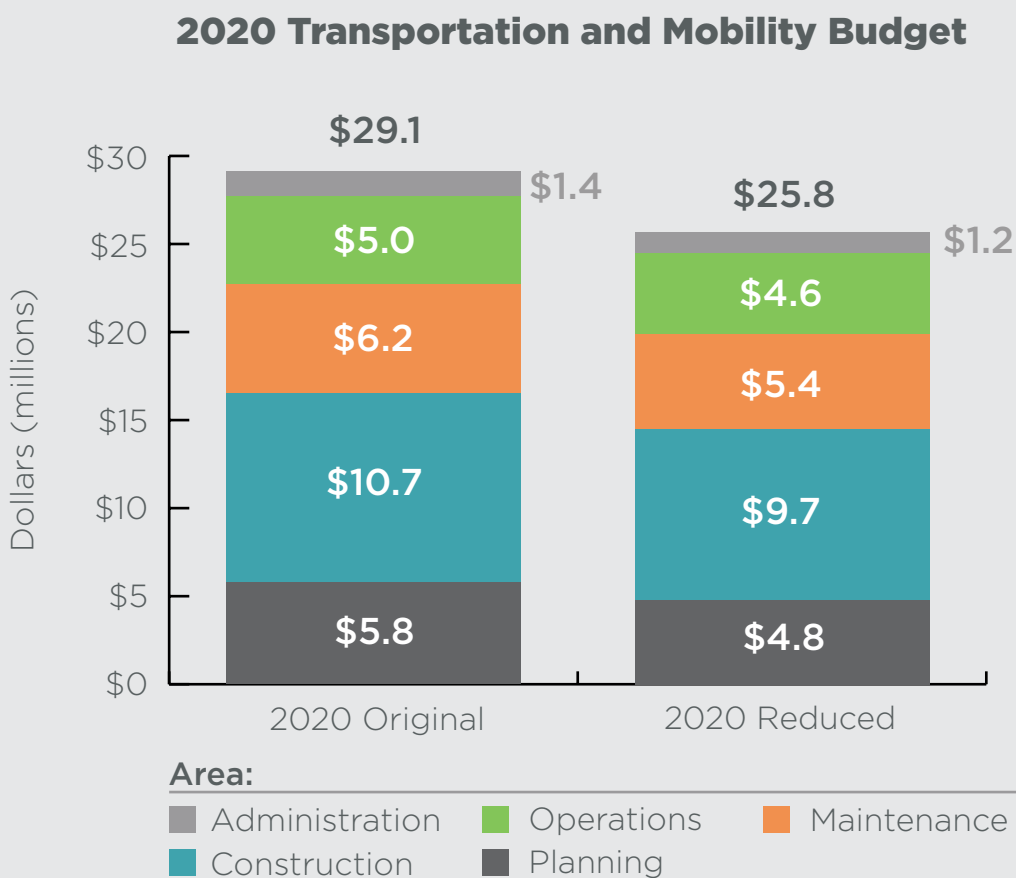
Traffic Crashes
(through 11/30/20)



There have been about 45% fewer crashes (total) and 35% fewer severe crashes in 2020 through November compared to the previous year.

Funding

Even before COVID-19 disrupted the world, the TMP documented the funding challenges in transportation. The TMP recommends **diversifying and increasing funding** to meet our goals and objectives. Through a community working group process, led by the Transportation Advisory Board (TAB) and city staff from multiple departments, a tiered and phased approach was developed as part of the TMP to identify potential new funding mechanisms. The first tier (mechanisms that can be implemented in the short-term) had the highest level of consensus between staff and the working group. This tier included a local mobility fee and a county-wide tax. Due to COVID-19, the county-wide tax, which would fund regional multimodal corridor improvements and Bus Rapid Transit (BRT) service, was delayed until 2021. The funding for the required nexus study for the local mobility fee was eliminated in 2020, but work on the local fee will resume in 2021. Staff also continues to explore the next tier of mechanisms including vehicle registration fees, curbside management fees and user fees on regional corridors.



Due to the impacts of COVID-19, the 2020 Transportation and Mobility budget was reduced by \$4.5M, including almost \$3.5M in workgroup budget reductions and \$1M in savings from underspending in 2019.

Grants

Over the past two years (2019-2020) the Transportation and Mobility Department has brought in \$5.3 million in federal highway grants and \$5.2 million in federal aviation grants. The city has also been granted an additional \$13.4 million in projects to be constructed over the next few years.

Essential Services

The city's Transportation and Mobility Department is responsible for planning, constructing, maintaining and operating Boulder's transportation system. This includes regular maintenance of infrastructure, repair of sidewalks and streets, and other services.

Maintenance

Regular maintenance of transportation infrastructure improves safety, reduces costs and benefits all travelers. Almost 80% of current Transportation and Mobility Department funding is used to operate and maintain the existing transportation system, which includes a wide variety of facilities.



Install and maintain street signs and striping/paint in streets



Upgrade and install new pedestrian curb ramps



Inspect, sweep, maintain and remove snow/ice from multi-use paths



Clean/remove trash and graffiti; remove snow/ice



Clean/remove graffiti; remove snow/ice



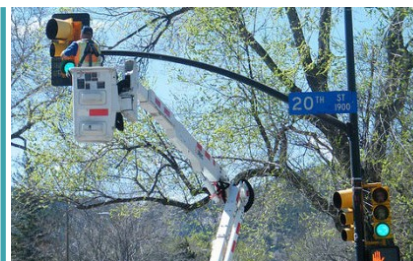
Repair sidewalk segments



Repair potholes



Maintain runway, taxiway and apron pavement



Install, maintain, operate and time traffic signals



Maintain and sweep/clean/spray pavement, curb and gutters; remove snow/ice

Maintenance Highlights

Table Mesa Resurfacing

Table Mesa west of Broadway was resurfaced in 2020. The city leveraged the resurfacing opportunity to restripe the segment based on community feedback and the Low-Stress Walk and Bike Network Plan to provide more comfortable facilities for people biking.



Annual Sidewalk Repair Program

In 2019, the city's Annual Sidewalk Repair Program upgraded 93 curb ramps to meet Americans with Disabilities Act (ADA) guidelines and ensure that people with disabilities can easily access the sidewalk; the program also repaired sidewalks at several key locations around town.



Boulder Airport Runway Rehabilitation

In October 2020 the Boulder Municipal Airport (BMA) concluded a \$5.5 million runway rehabilitation project ahead of schedule and on budget. Funded entirely by the Federal Aviation Administration (FAA), the project included partial reconstruction of the runway and taxiway system as well as installation of new energy-efficient lighting and signage.



Snow and Ice Removal

In November 2019, Boulder experienced a record winter storm. Snow fell for almost a full day and there was more than two feet of accumulation in parts of the city. Boulder had not seen that much snow fall that quickly since 1997. City snow crews worked around the clock for weeks to clear Boulder's streets and paths in an effort to ensure safe travel for all modes. The city continues to innovate in our snow and ice removal practices.



Project Highlights

In the past two years, the Transportation and Mobility Department has designed, sought funding for, and constructed innovative transportation projects that will have a positive impact on the community today and for years to come. These major projects aim to exceed industry standards and meet the transportation needs of the community.

Arapahoe Avenue & 13th Street Underpass

Widened the multi-use path to address conflict zones, improve sight distance and reduce high-water closures of path.



Valmont Road Quiet Zone

Implemented physical infrastructure and warning systems to eliminate requirement for train horn sounds at crossings.



Foothills Underpass

Created a more direct crossing of Foothills Parkway, with less-steep slopes than the previous bridge and improved connections to nearby bike and pedestrian routes.



Boulder Slough Multi-use Path

Aligned with the development goals of Boulder Junction, this 10-foot-wide path includes signage and wayfinding and connects with existing and future multi-use paths.



TMP Measurable Objectives

Introduction

The TMP identifies eight Measurable Objectives to determine if the work we are doing is on track to meet our desired outcomes. Some of the measures were new with the 2019 TMP, others were modified slightly, and others have been tracked consistently over several years. These measures are included in the 2020 Snapshot on the next page. The target year for most outcomes is 2030, though there are some exceptions, as noted. The snapshot includes a description of where we started, where we are now, and where we want to be, with an assessment of whether or not we are on track to meet our target. Areas that are red or yellow likely require a change in approach or additional funding to support meeting the overall goals of the TMP. Additional details on these measures and other measures that are being monitored but that do not have specific targets are included in the subsequent Vision and Goals sections on pages 10-20.

2020 Snapshot Key

Met or on track to meet target

Stable but not on track to meet target

Trending in the wrong direction

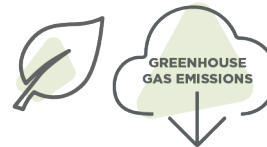
New or updated measure for which don't yet have data to assess a trend

Measurable Objectives

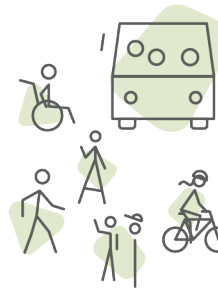
1. Vehicle Miles Traveled (VMT)



3. Climate



5. Vulnerable Populations



7. Travel Time



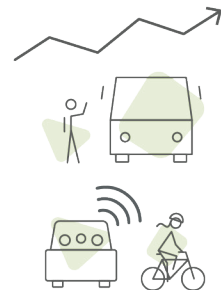
2. Mode Share



4. Safety



6. Transportation Options



8. Walkable Neighborhoods



Measurable Objectives: 2020 Snapshot

Attachment A - 2020 Transportation Report on Progress

Objective	Measure	Where Did We Start?	Where Are We Now?	Where Do We Want to Be?	Trend
1. VMT - Reduce vehicle miles traveled	Daily VMT in Boulder	2.19 Million Miles per Day (1990)	2.49 (2019)	1.90 (2030)	
	Daily VMT per Capita	15 Miles per Person per Day (1990)	12 (2018)	7.3 (2030)	
2. MODE SHARE - Reduce single occupant mode share	Resident SOV Mode Share	44% SOV Trips (All Trips) (1990)	37% (2018)	20% (2030)	
	Non-Resident SOV Mode Share	74% SOV Trips (Work Trips) (2008)	78% (2017)	60% (2030)	
3. CLIMATE - Reduce greenhouse gas emissions (GHG)	GHG Emissions	501,930 MT CO ₂ Emissions (2005)	426,264 (2019)	250,965 (2030)	
	Percent Electric Vehicles	5.5% Municipal 2.7% Community	5.5% Municipal 2.7% Community	100% Municipal (2030) 30% Community (2030)	New Metric - No Trend Yet
4. SAFETY - Eliminate serious injury and fatal crashes	Serious Injury and Fatal Crashes	52 Crashes (2009)	61 (2019)	0 (2030)	
5. VULNERABLE POPULATIONS - Increase access to comfortable walkways & bikeways and local/regional transit	Percent of Population with Access to Comfortable Walkways and Bikeways	89% (2019) 88% (2019)	89% (2019) 88% (2019)	100% (2030)	New Metric - No Trend Yet
	Percent of Population with Access to Local/Regional Transit	87% (2019)	87% (2019)	100% (2030)	New Metric - No Trend Yet
6. TRANSPORTATION OPTIONS - Increase transit service hours, bike system miles at least as much as employment grows	Transit Service Hours	374,757 Hours (2016)	378,032 (2018) (1% increase)	4% Increase (between 2016 and 2018)	
	Bike System Miles	179 Miles (2016)	190 (2019) (6% increase)	4% Increase (between 2016 and 2019*)	
7. TRAVEL TIME - Maintain 1994 levels	Auto Travel Time	7.1 - 15.4 Minutes (1994, 1995, 2006, 2007)	8.1 - 16.7 Minutes (2018, 2019)	Generally within about one minute of baseline travel times	
8. WALKABLE NEIGHBORHOODS - Increase share of residents in walkable 15-minute neighborhoods	Percent of Population living in a Walkable Neighborhood	43% (2019)	43% (2019)	80% (2030)	New Metric - No Trend Yet

Green = Met or on track to meet target

Yellow = Stable but not on track to meet target

Red = Trending in the wrong direction

Gray = New or updated measure for which don't yet have data to assess a trend

- Only those measure with specific targets are included in this table

*2018 data not available

Full data from baseline to where we are now

Trendline

Packet Page 160 of 205

Progress Toward the TMP Vision & Goals

The following section introduces the vision for Boulder's transportation system and then provides an overview of progress made toward each of the five TMP goals, including how we measure progress and what initiatives and actions we are taking to meet each goal.

Vision

Goal

How We Measure Progress

Measurable Objectives

What We Are Doing

Initiatives



Project/Program Highlight
(Action Item Number)

Action Item Links

The 10 Initiatives:

1. Making Travel Safe in Boulder
2. Making Travel Comfortable through a Low-Stress Walk and Bike Network
3. Providing Mobility Options
4. Prioritizing the Pedestrian
5. Shaping Innovation and New Forms of Mobility
6. Delivering Transit in New Ways
7. Connecting to the Region
8. Managing Demand on our System Together
9. Ensuring Equity
10. Funding the Transportation System



Vision

Boulder's transportation vision is to create a **safe, accessible** and **sustainable multimodal** transportation system connecting people with each other and where they want to go.

Initiative 10: Funding The Transportation System

Identifying and pursuing appropriate funding is essential in working toward the TMP goals, which is why this key initiative is highlighted separately from the other key initiatives. Each of the TMP goals detailed in this section is dependent upon appropriate funding. To achieve this vision with limited resources, the department needs to **prioritize its investments**. To ensure efficient use of existing travel corridors, the city will prioritize investments in improvements to safety and maintenance for all modes of the existing transportation system while developing creative solutions for the future. Prior to COVID-19, identifying funding solutions for the transportation system was a high priority. Now it is even more imperative.



Select funding sources that are predictable, reliable, and tied to use (10.B)

Due to COVID-19 budgetary impacts, the funding for a local transportation mobility fee study was removed from the 2020 budget. However, staff will be reconvening the community Funding Working Group to prepare to restart study of the local mobility fee in 2021, which will directly address social and economic equity issues.



Implement funding mechanisms for regional travel that enhance performance and raise revenue (10.D)

As part of the design work for our multimodal regional corridors of SH 119 and SH 7, managed lanes and dynamic pricing are key components to operate and maintain the BRT system and multimodal components.

Initiative 10 - Action Item Links

- [10.A - Identify Funding Mechanisms that Decisionmakers Support](#)
- [10.B - Select Funding Sources that are Predictable, Reliable, and Tied to Use](#)
- [10.C - Ensure Lower-Income Residents and Employees are not Disproportionately Impacted by Fees and Taxes](#)
- [10.D - Implement Funding Mechanisms for Regional Travel that Enhance Performance and Raise Revenue](#)

Goal

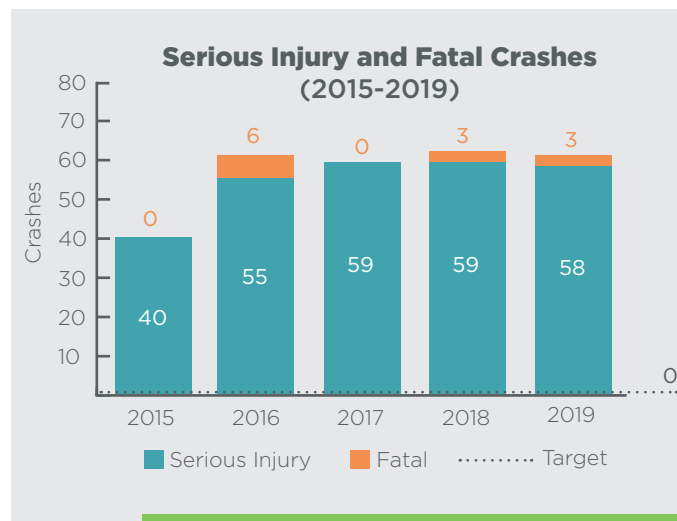
Be SAFE

How We Measure Progress

Measurable Objective 4: Safety

The **Vision Zero Action Plan (VZAP)** was completed last year and includes action items to make progress toward our community's Vision Zero goal to eliminate all serious injuries and fatalities caused by traffic crashes in Boulder. The VZAP addresses both system-wide safety issues and specific locations with identified crash trends. Progress on these action items has continued over the past year. An evaluation of current and future crash data will assess the effectiveness of location-specific and system-wide changes.

Staff will continue to implement the VZAP with a focus on **major streets, vulnerable users (people walking, biking and on motorcycles), intersections, speed, and permissive left turns**. In 2021, additional emphasis will be placed on education/outreach and enforcement elements of the action plan. Progress to date indicates that additional funding and actions will be required to meet our Vision Zero goal of eliminating all serious injuries or fatalities caused by traffic crashes.



The crash trend seen for the past several years has continued through 2019 (~60 severe crashes per year)

What We Are Doing

Initiative 1: Making Travel Safe in Boulder



Upgrade Signal System (1.B)



In 2020, the City of Boulder received a \$1.35 million grant from the Denver Regional Council of Governments (DRCOG) to fund upgrades to the city's traffic communication infrastructure through 2022. The benefits of these upgrades include:

- 1. Less traffic congestion** - Advanced traffic monitoring equipment and real-time performance metrics will allow for enhanced management of traffic flows to reduce congestion and, as a result, greenhouse gases emitted by vehicles.
- 2. Enhanced ped and bike monitoring** - Transportation staff will be able to access more detailed information on pedestrian and bicyclist travel patterns to improve signal timing and safety for non-vehicular travel.

3. Improved incident response - The existing traffic signals communication system will be upgraded to fiberoptic, improving signal communication and reliability, as well as supporting incident management and crash response.

4. Future multimodal technologies - The system upgrades will lay the groundwork for the installation of future adaptive technologies to improve multimodal travel and safety, such as Transit Signal Priority and pedestrian-protected signal timing at intersections.



Implement 20 is Plenty (1.D)

After research, discussion with the community and approval by City Council, the new default speed limit in the city was lowered to 20 mph in June 2020 from the previous speed of 25 mph. This lower speed limit on local, residential streets is intended to make residents feel safer and reduce speed-related crashes, both of which are Vision Zero goals for the community. Staff is continuing to explore lowering speeds on other street types. Additionally, the department has expanded the Neighborhood Speed Management Program (NSMP), which helps neighborhoods access speed mitigation resources, such as speed humps installation and safety signs.



Initiative 1 - Action Item Links

1.A - [Vision Zero - Green Pavement Markings](#)
 1.B - [Low-Stress Network](#)
 1.C - [Intersection and Corridor Treatments](#)

1.D - [Vision Zero Innovation Program](#)
 1.E - [Traffic Safety: Education and Enforcement](#)
 1.F - [Safety Education Programs](#)

Vision Zero - What's New?

Vision Zero is the Boulder community's goal to reduce the number of traffic-related fatalities and serious injuries to zero. At its core, this goal is inspired by the belief that traffic collisions are preventable, and even one fatality is too many. Travel safety is at the core of everything we do, and the city takes a comprehensive travel safety approach with 4 "E"s:

- **Engineering:** Infrastructure and the rest of the built environment
- **Education:** Information about safe travel behavior
- **Enforcement:** Monitoring to ensure people are traveling safely
- **Evaluation:** Tracking how we are doing

Part of "Evaluation" is doing a detailed analysis of crashes and making recommendations for improvement. These are documented in the Safe Streets Boulder Report (SSBR) and companion Vision Zero Action Plan (VZAP). Some of the highlights of progress since completion of the SSBR and VZAP include:

Engineering

Pedestrian Head Starts (also called Leading Pedestrian Intervals, or LPIs) allow pedestrians to start crossing before motor vehicles can start moving. Staff implemented LPIs at 35 crossings in 2019-2020, bringing the total number of LPIs in the city to 78.

Pedestrian-Protect is a new traffic signal timing approach that turns a signal to protected-only left-turns when a pedestrian pushes the button to cross the street. One intersection has had this implemented so far, and the signal system upgrade (described on the previous page) will make it easier to add this at other intersections.

Green Bike Lane Pavement Markings make biking facilities more prominent with an emphasis on highlighting potential conflict points with motor vehicles. Recent installations include 30th Street (Diagonal to Baseline) and Folsom Street (Iris to Colorado) in 2019 and Pine Street (Folsom to 28th) and Table Mesa Drive (Vassar to Broadway) in 2020 with more to come in the Folsom corridor 2020-2021 during the pavement resurfacing.

Education

Education, largely through social media, focused on the new 20 mph default speed limit (20 is Plenty) and the impact of speed on crashes, particularly with vulnerable users such as pedestrians and bicyclists. Future outreach efforts will address unsafe behaviors.

Enforcement

In addition to traffic enforcement by police officers, two automated enforcement efforts are key to reducing unsafe travel behavior: photo speed vans and red-light cameras. In 2019 **photo speed enforcement vans** were deployed for 3,572 hours at 53 locations, monitored 943,474 motorists, and observed 13,496 speed limit violations. The city's **Red Light Violation Photo Enforcement Program** started as a demonstration in 1998 with four approaches and now has 10 enforced approaches. The intersections where the city has posted red light cameras have seen a sharp drop in violations since the program first started in 1998 and a 70% decrease in the annual number of collisions caused by running red lights.

Evaluation

Staff performs ongoing monitoring of treatments being implemented to understand the impact of changes.

Neighborhood Speed Management Program (NSMP)

In 2019 and 2020, the NSMP installed 17 projects, including six designed to meet the new 20 mph speed limit that went into effect in June 2020. Some highlights include:



Through bilingual community engagement with the residents of Boulder Meadows and a strong collaboration with the Transportation Advisory Board, installed 17 speed humps in the neighborhood



Installed a chicane on Upland Avenue as a pilot—innovation in both traffic calming design as well as project delivery



Worked with Boulder Arts and StreetWise to deliver a street mural as a traffic calming experiment on 34th Street in the San Juan del Centro neighborhood, as part of a study for a CU-Denver Masters in Urban and Regional Planning (MURP) capstone project

Goal

Be **EQUITABLE**

How We Measure Progress

Measurable Objective 5: Vulnerable Populations

- Providing comfortable facilities for walking and biking makes it easier for people to choose these travel options. A comfortable walkway is wide enough so that two people can walk next to each other, are separated from traffic, and have few commercial driveways to cross. A comfortable bikeway often has vertical separation from vehicle traffic (adjacent to a roadway or as an off-street multi-use path) or is on a street with lower vehicle volumes. The geographic data shows that **89%** of Boulder residents have access to (i.e., live within 200') **comfortable walkways** and **88%** to **comfortable bikeways**.
- Providing comprehensive access to transit for Boulder residents is another new—and important—measure identified in the TMP. Data shows that **87%** of Boulder residents **live within a 1/4 mile of a local or regional transit stop**.
- City financial contributions to senior transportation and paratransit services including **Access-a-Ride** and **FlexRide** continued to increase from **\$160,000** in 2002 to **\$327,154** in 2020. Expected increases in Boulder's elderly population requires additional attention and funding for ensuring local and regional mobility. The city also invests in capital improvements to meet Americans with Disabilities Act (ADA) design guidelines through its annual sidewalk repair and street pavement maintenance programs.



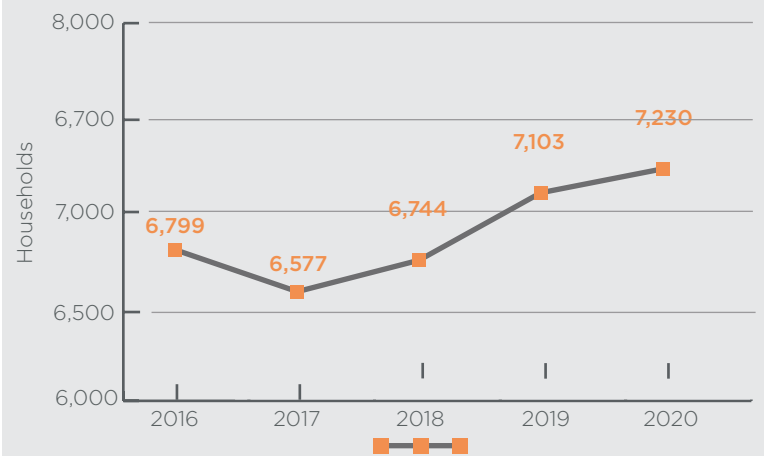
**BOULDER VALLEY
SCHOOL DISTRICT**

- **Reducing vehicle trips to and from school** is a primary goal of the city and the Boulder Valley School District (BVSD). The TMP called for a new measure to track how many students walk, bike and take a bus to school. BVSD is exploring consistent and comprehensive ways of collecting this data, as well as specific targets for each school level, for future reports.

Measurable Objective 8: Walkable Neighborhoods

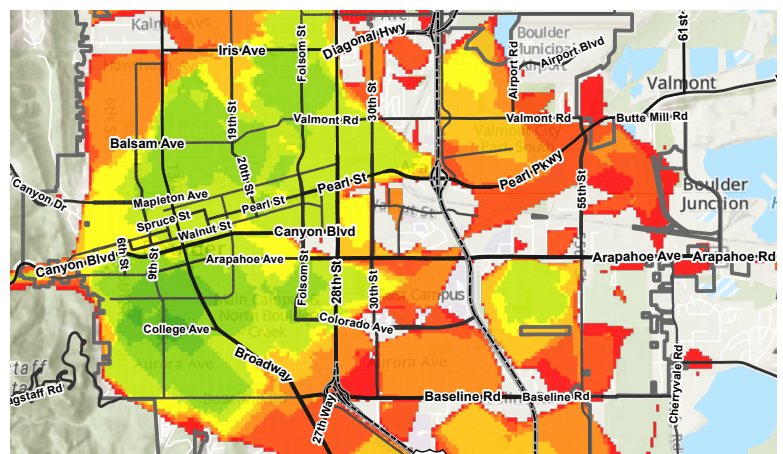
Walkable (pedestrian-friendly) neighborhoods mean that people walking, pushing strollers and in wheelchairs can access destinations within a 15-minute trip. The 2019 TMP introduced a new methodology for evaluating the share of walkable neighborhoods in Boulder and found that **43%** of Boulder residents **live in walkable neighborhoods**.

Number of Households Eligible for NECO Pass (2016-2020)



Households Eligible for NECO Pass

The Neighborhood EcoPass (NECO) Program increases access to transit, lowers single-occupant vehicle use, saves money and enhances community relations. It is an annual transit pass purchased by residents or a neighborhood organization for all members of participating households.



High Walkshed Score

Low Walkshed Score

What We Are Doing

Initiative 2: Making Travel Comfortable through a Low-Stress Walk and Bike Network



Implement Neighborhood GreenStreets (2.A)

In 2019, 13th Street became the first Neighborhood GreenStreet. Neighborhood GreenStreets are low-traffic streets prioritized for walking and biking, where people of all ages and abilities feel safe and comfortable. The city installs safety signage, crossings, paint markings and other treatments to these streets to improve pedestrian and bicyclist safety. Creating GreenStreets is part of our Vision Zero goals to improve safety and comfort for walking and bicycling. For 2020-21, staff is focused on implementing high-priority GreenStreet corridors in the Goss-Grove Neighborhood.

Initiative 2 - Action Item Links

- | | |
|--|--|
| 2.A - Implement Neighborhood GreenStreets | 2.D - Continue Path System Build Out |
| 2.B - Incorporate Multimodal Design into Corridor Projects | 2.E - Recommend Improvements in Pedestrian Improvement Areas |
| 2.C - Enhance Low-Stress Bike Network | |

Initiative 4: Prioritizing the Pedestrian



Increase Winter Safety for Pedestrian Facilities (4.C)

The City of Boulder is committed to multimodal transportation, including year-round access to bus transit. The current snow and ice removal budget supports contractors hired by the city to clear approximately 40 high-ridership bus stops after snowfalls resulting in at least two inches of accumulation. With support from the Pedestrian Action Committee, the city's Shovel-a-Stop Program is a new effort to increase the number of bus stops cleared after each snow event through community volunteer support. Clearing bus stops helps prevent slips and falls and increases safety and accessibility for bus riders of all ages and abilities.

Initiative 4 - Action Item Links

- | | |
|---|---|
| 4.A - Improve Safety as Identified in Vision Zero Action Plan | 4.D - Update Pedestrian Crossing Treatment Guidelines |
| 4.B - Implement Low-Stress Walk Network | 4.E - Implement the ADA Self Evaluation and Transition Plan |
| 4.C - Refine Snow and Ice Removal Practices | |

Initiative 9: Ensuring Equity

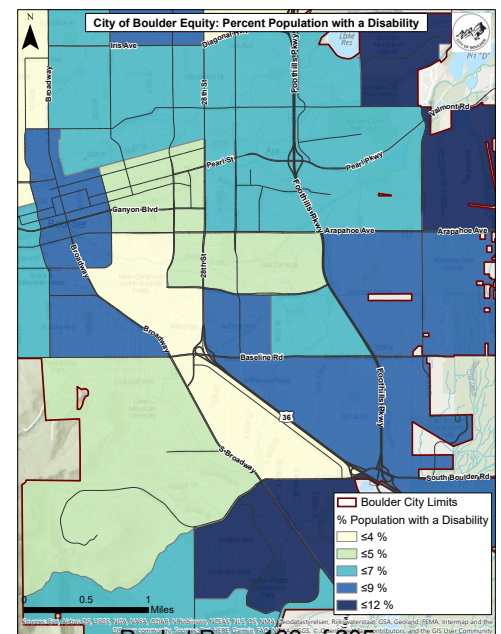


Create Community Wide Equity Index (9.A)

Staff is working on a statistically accurate and reliable way to create a mapped equity index--including populations of color, disability status, income levels and other factors--to ensure we are meeting the needs of the entire community. This effort is still in progress and will be incorporated into the prioritization of projects and programs.

Initiative 9 - Action Item Links

- | |
|---|
| 9.A - Incorporate Community Wide Equity Index |
| 9.B - Pursue Fare Free Transit |
| 9.C - Implement the ADA Self Evaluation and Transition Plan |
| 9.D - Require Mobility Providers Offer Low-Income Fare Products |



Goal

Be RELIABLE

How We Measure Progress

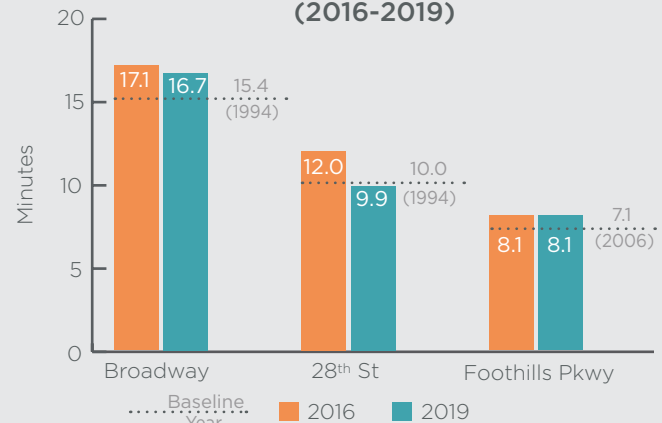
Measurable Objective 7:
Travel Time

The 2019 TMP has the goal of maintaining 1994 travel times on Boulder arterial streets, as well as improving travel time reliability and predictability. The travel time of a vehicle depends on both the number of other vehicles on the roadway and the signal timing*. Keeping travel times consistent requires continued shifts in travel modes. Transit travel time advancements such as the managed lanes on US 36, the planned BAT (business access and transit) lane expansion on 28th Street and traffic signal priority on Arapahoe Avenue all improve reliability for transit riders and make transit a more viable option, which reduces the number of single-occupant vehicles on our roadways. Planning also continues for advancing regional BRT service along SH 119 (via 28th Street) and SH 7 (via Arapahoe Avenue). The city regularly counts vehicles on key arterial roadways in the city, as well as on roadways entering the city. In addition, travel time data is now being collected on three east-west arterials and three north-south arterials every three years. In general, travel times have remained within about one minute of the baseline travel times (1994 and later).

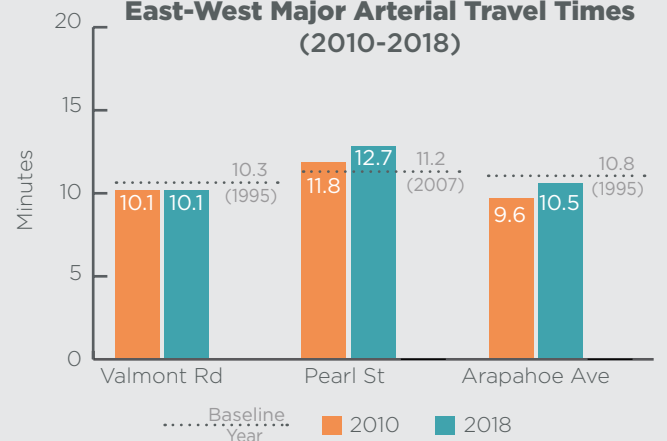
→ Traffic volumes on key arterial roadways internal to the city have increased by approximately **5%** between **2014 and 2019** but are approximately **9%** lower than the peak seen in 2001.

→ Traffic volumes on roadways entering the city have increased by approximately **11%** between **2014 and 2019** and now exceed the previous peak experienced in 2003 by **4%**.

*See also Signal System Upgrade (2.B) under Be SAFE

North-South Major Arterial Travel Times
(2016-2019)

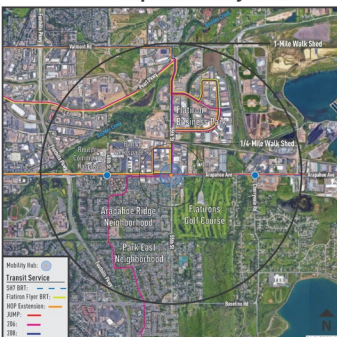
Travel times for the Broadway and Foothills corridors are slightly higher than the baseline travel times. Broadway travel times have decreased slightly over the past few years, while Foothills travel times have remained constant. The most recent 28th Street travel time is slightly lower than the baseline travel time.

East-West Major Arterial Travel Times
(2010-2018)

Travel times for the Valmont and Arapahoe corridors are slightly lower than the baseline travel times. The most recent Pearl travel time is higher than the baseline and has increased slightly over the past few years.

Initiative 5: Shaping Information and New Forms of Mobility

55th & Arapahoe Study Area



Develop Mobility Hubs (5.F)

The 55th Street and Arapahoe Avenue area is identified in city plans as a future mobility hub with transit-oriented development. Mobility hubs typically combine key transit stations with secure bicycle parking as well as bike sharing and carsharing access to seamlessly integrate a range of transportation options. For instance, riders can use smartphones and smartcards for reservations and fare collection. In 2019, the city received federal funding for planning and design for this area, complementing the ongoing work of the East Boulder Subcommunity Plan. The resulting Station Area Master Plan is expected to be complete in 2021 and will provide a blueprint for future development with a mix of housing types and land uses in proximity to transit options, including the future SH 7 Bus Rapid Transit corridor (see also 7.F).

Initiative 5 - Action Item Links

- 5.A - Develop Dynamic Pick-Up and Drop-Off Zones
- 5.B - Include Smart Street Elements in All Future Projects
- 5.C - Partner with TNCs to Support Shared & Electric Vehicle Trips

- 5.D - Explore Dynamic Pricing for Curbside Management
- 5.E - Modify Parking Code to Promote Mixed-Use Development
- 5.F - Enhance First and Final Mile Connections Near Mobility Hubs

Initiative 7: Connecting to the Region

Promote & Support Vanpool and Rideshare Services (7.D)

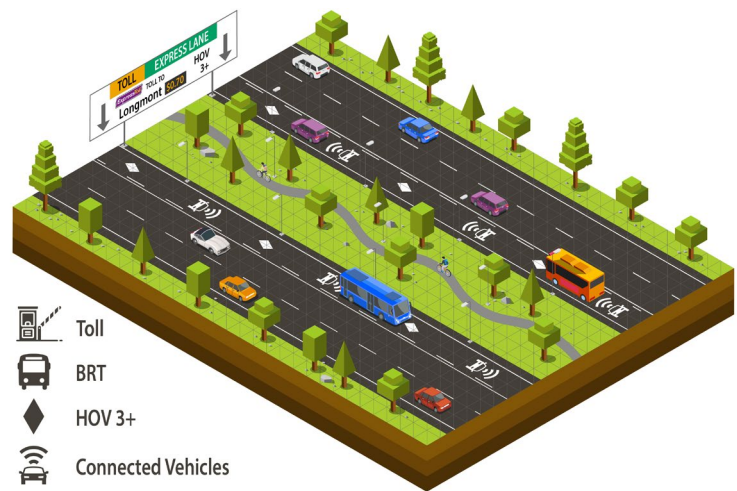


Vanpools are meeting an important service need as RTD continues to suspend and/or reduce frequency of routes. The city has been collaborating with our vanpool partners, Enterprise, Denver Regional Council of Governments (DRCOG), and the North Front Range Metropolitan Planning Organization (NFRMPO), to develop creative, safe and reliable transportation solutions for employee commutes. With the recent suspension of the Regional Transportation District (RTD) GS bus route between Boulder and Golden, these partners have been key in supporting essential workers accessing their workplaces. The city currently provides a \$20 per month subsidy for all residents and employees who utilize vanpools for their commute.

Implement High Quality, Reliable Transit (7.F)



Implementation of BRT corridors is important for providing high quality, reliable transit, particularly connecting Boulder to nearby communities. Recently Boulder has worked with regional partners to advance two corridors: **SH 119 to Longmont** and **SH 7 to I-25/Brighton**. The SH 119 corridor will include BRT, express/managed lanes, and a commuter bikeway that will result in improved multimodal access and faster and more reliable travel times to address growing congestion, improve safety, and support economic vitality in the Northwest area transportation network. Limited segments of SH 119 corridor improvements, such as the 28th Street Business Access Transit Lanes, are expected to be constructed beginning in 2022. The SH 7 corridor will include regional BRT, a regional bikeway, pedestrian improvements, first and final mile connections, and future innovative transportation modes that will result in improved safety, multimodal access and faster and more reliable travel times. Preliminary engineering for corridor improvements is expected to begin in 2021-22.



SH 119 BRT Concept

Initiative 7 - Action Item Links

7.A - Advance Designs and Secure Funding for Regional Corridor Projects
 7.B - Improve Regional Transit Service in US 36
 7.C - Expand FLEX Service Between Fort Collins and Boulder

7.D - Promote Regional Vanpool and Ridesharing Services
 7.E - Actively Participate in Regional Partnerships and Coalitions
 7.F - Plan, Design, and Implement High Quality BRT

Goal

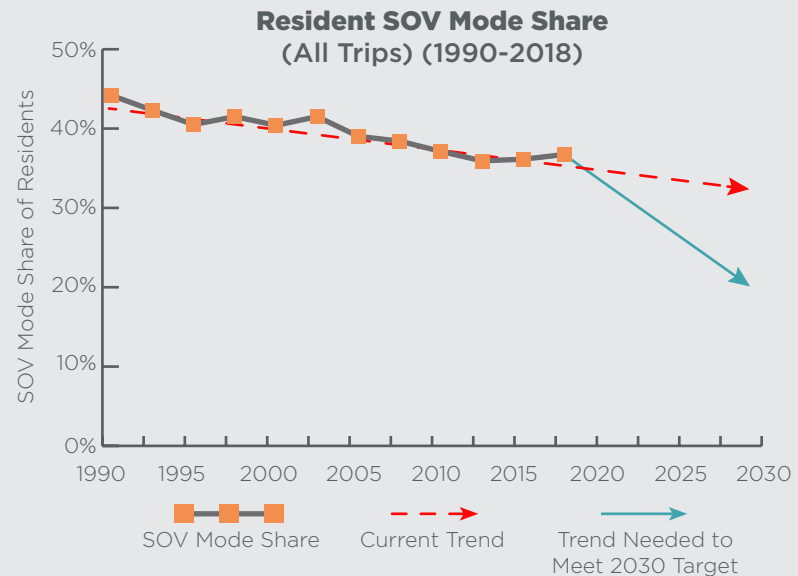
TRAVEL CHOICES

How We Measure Progress

Measurable Objective 2: Mode Share

→ The 2019 TMP focuses on reducing the share of single-occupant vehicle (SOV) trips, as they cause the most congestion and contribute to greenhouse gas emissions. The TMP includes different targets: SOV trips by residents (all trip types) and SOV trips by non-residents (work trips). Data for **resident SOV mode share** is shown in the chart to the right. For residents, the **TMP targets SOV mode share to be no more than 20% of all trips by 2030**; it is currently hovering around 36%.

→ For **non-residents**, the **TMP targets SOV mode share to be no more than 60% of all work trips by 2030**. Recent data shows the non-resident SOV mode share to be hovering around 80%. Similar to the residential mode share, unless substantial reductions to SOV work trips by non-residents are made over the next few years, we are not on track to meet our target.



The TMP targets resident single-occupant vehicle (SOV) mode share to be no more than 20% of all trips by 2030. Recent data shows the mode share currently hovering around 36%. Unless substantial reductions to SOV trips are made over the next few years, we are not on track to meet our target.

Measurable Objective 6: Transportation Options

The 2019 TMP strives to have transportation options grow at least as quickly as employment grows. Based on employment data from the State of Colorado, the number of jobs grew **4%** between 2016 and 2018, while the number of transit service hours grew **1%**, and the number of bike system miles grew **6%**.

What We Are Doing

Initiative 3: Providing Mobility Options



Explore Shared Micromobility (3.C)



With an aim of increasing options for moving around town, staff have explored shared micromobility opportunities in recent years. This has resulted in new city ordinances and pilot programs including the following:

- In July 2020, city council adopted Ordinance 8398 which allows staff to explore a dockless e-bike share service in the city. In September 2020, City Council adopted Ordinance 8423 which allows staff to also explore a shared e-scooter service.
- Both dockless e-bikes and e-scooters will be folded into a comprehensive Shared Micromobility Program. In 2021, shared micromobility operator(s) will be selected to provide safe and equitable micromobility services throughout the City of Boulder.

Initiative 3 - Action Item Links

3.A - [Implement the Renewed Vision for Transit](#)

3.B - [Expand the High-Frequency HOP Service](#)

3.C - [Explore Shared Micromobility and Expand Access to Shared E-Bikes](#)

3.D - [Explore Incentives for Residents to Purchase E-Bikes](#)

3.E - [Identify Locations, Policies, and Regulations to Support Mixed Land Use](#)

Initiative 6: Delivering Transit in New Ways



Electrify & Expand HOP Services (6.B)

Refinement of the HOP expansion plan continues, which will feature four HOP routes radiating throughout the community. Three electric buses are planned for delivery in 2021 to support HOP services, and city and Via Mobility Services continue to partner in securing the additional capital funding necessary for the electrification of the entire HOP fleet and related charging infrastructure. Expanded HOP service is anticipated when ridership levels and economic conditions rebound from the effects of COVID-19.

Initiative 6 - Action Item Links

6.A - [Expand City Role as Transit Provider](#)
6.B - [Electrify and Expand HOP Services](#)

6.C - [Explore Formation of Boulder County Transit Agency](#)
6.D - [Seek Additional Funding Sources for Local and Regional Transit](#)

Initiative 8: Managing Demand on Our System Together



Expand Transit Pass and Ticketing Programs (8.A)

While staff supported and welcomed additional Neighborhood EcoPasses and Business EcoPasses to the program in late 2019 and early 2020, transit service and ridership was significantly reduced due to COVID-19. Staff are currently conducting two pilot programs in Boulder communities with the aim of providing better access to transit in low-income neighborhoods while utilizing RTD's existing pass programs. A focus for 2021 will be providing transit access for Boulder residents and employees in a more equitable manner.



Conduct Clean Energy and Shared Mobility Pilots (8.C)



The City of Boulder and Fermata Energy are studying how the batteries in electric vehicles can help reduce the city's building energy costs with an innovative pilot at the North Boulder Recreation Center. Typically, electric vehicle chargers provide energy in one direction: from the energy grid or building to the car. In this pilot, a charging station has been installed that enables two-way electricity: from the building to the car and from the car back to the building. This technology, called vehicle-to-building, can provide the city new ways to manage its energy load and reduce energy costs. In the pilot, Boulder will connect one of its electric fleet vehicles to the vehicle-to-building charging system. The system then connects to the

recreation center's electricity system. The fleet car will charge at night, when building energy demand is low, and discharge the battery to the recreation center during the day, when the building's demand peaks. The goal is to reduce peak demand which in turn can reduce the monthly bill. Further, if the city can reduce peak demand and save funds through this project, it may unlock new use cases for expanding the city's electric vehicle fleet. Not only can electric vehicles help meet our climate goals and reduce air pollution, but they could also be a strategy to reduce operation costs and enhance resilience.

Initiative 8 - Action Item Links

8.A - [Expand Transit Pass and Ticketing Programs](#)
8.B - [Expand the Access District Approach](#)
8.C - [Conduct Clean Energy and Shared Mobility Pilots](#)

8.D - [Implement TDM and Parking Strategies that Use Land Efficiently](#)
8.E - [Grow Partnerships with Boulder Chamber](#)
8.F - [Partner with Local TMO's to Enhance Commute Solutions](#)

Goal

CLIMATE COMMITMENT

How We Measure Progress

Measurable Objective 1:
Vehicle Miles Traveled

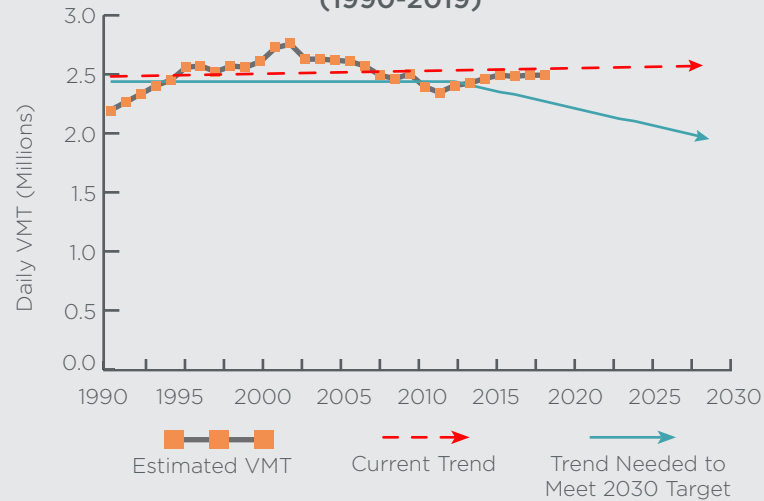
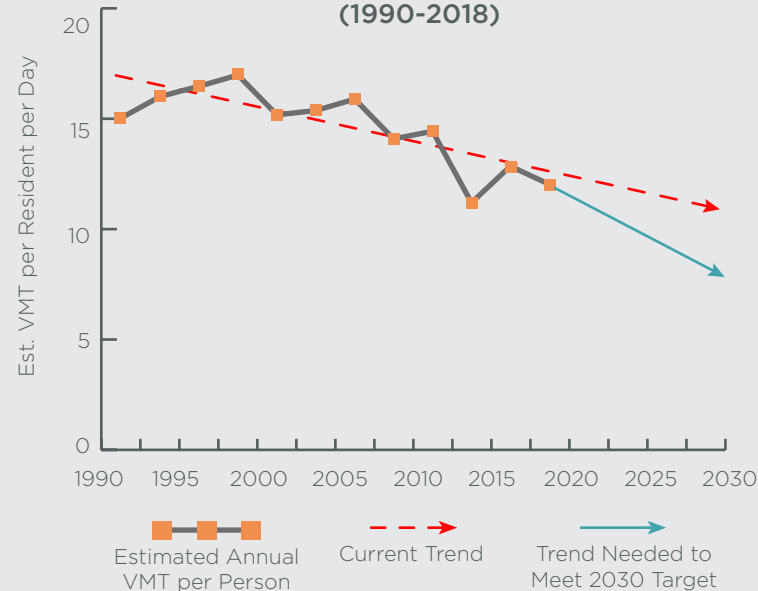
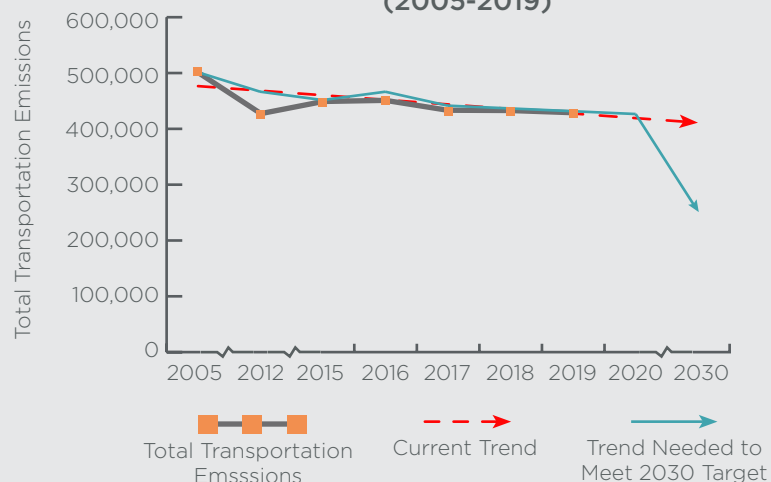
- After peaking in 2002, **vehicle miles traveled (VMT) in Boulder has generally stabilized at just under 2.5 million vehicle miles per day**. Until 2013 the target was to maintain levels at 2.44 million VMT per day. The new target for 2030 is a 20% reduction. Based on current trends we are not on track to meet that target.
- The TMP also includes a measure for **VMT by residents only**, targeting **7.3 miles per day per resident by 2030**. Resident VMT has been generally declining since 1990; however, we are still not on track to meet the 2030 target.
- For non-residents **who work in Boulder**, the **average commute distance** is hovering around **18 miles one-way**.

Measurable Objective 3:
Climate

The transportation sector has historically generated just under **30% of total emissions** in Boulder (with commercial and industrial buildings generating over half of all emissions). Transportation-related emissions are dependent on the number of miles traveled (VMT), as well as the type of fleet. Although VMT has stabilized, the fleet mix has changed, particularly with more electric vehicles (EVs) on the road such that GHG emissions have declined; however, the trend is not decreasing enough to meet the target of reducing GHG emissions 50% over 2005 levels by 2030.

The TMP also includes tracking of electric vehicles:

- The **City of Boulder** has over 25 EVs/hybrid vehicles currently in its fleet with plans to increase over time. The GO EV City resolution passed in September 2020 established a 100% electric or zero-emission vehicle goal (as technology and budgets allow). The city is working with other municipal partners and with shared fleets such as taxis, rideshare and carshare companies to transition shared fleet vehicles to full electric fleets by 2030.
- The **HOP** currently has a fleet of 15 buses; one of the 15 has been converted from diesel to electric. Three battery electric buses are also on order for delivery in early 2021 (two are new buses, one is a replacement). The total fleet will grow to 17, and EVs will comprise 17.6% of the total fleet.
- Within **Boulder** there were **2,559 EVs** registered (2.7% of all registrations) in 2019.
- The GO EV City resolution also sets the goal of transitioning **30%** of all vehicles within the city to zero emissions by **2030**, and **100%** of all vehicles by **2050**.

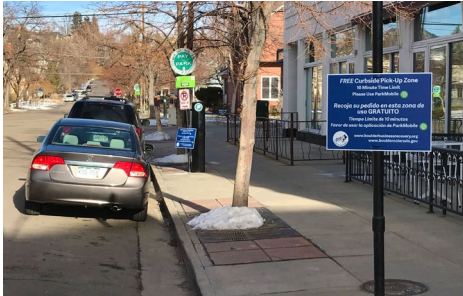
Total Daily VMT
(1990-2019)Estimated VMT per Person per Day
(1990-2018)Total Transportation Emissions
(2005-2019)

What We Are Doing

Initiative 5: Shaping Innovation and New Forms of Mobility



Create a Dynamic Curbside Management Strategy (5.A)



In 2020, the Transportation and Mobility Department and the Community Vitality Department kicked off the project Revitalizing Access in Boulder, a deliverable of the Access Management and Parking Strategy (AMPS), which seeks to measure and appropriately value public space for vehicle storage. The creation of a new dynamic pricing approach will align with community priorities as well as commercial and visitor needs. The pricing approach will be applied to city-maintained on-street and off-street parking spaces, including adjustments to fees for parking permits and fines for parking violations.

Initiative 5 - Action Item Links

5.A - Create a Dynamic Curbside Management Strategy
 5.B - Include Smart Street Elements in All Future Projects
 5.C - Partner with TNC's to Support Shared and Electric Vehicle Trips

5.D - Explore Dynamic Pricing for Curbsides
 5.E - Modify the Parking Code to Promote Mixed Use Developments
 5.F - Utilize Advanced Mobility to Address First and Final Mile Connections

Initiative 7: Connecting to the Region



Advance Design of and Secure Funding for Regional Corridor Projects (7.A)

The City of Boulder continues to partner with local, regional and federal partners to advance planning, design and implementation of regional corridor projects, with recent major advancements for the Diagonal/SH 119 and East Arapahoe/SH 7 corridors ([see also 7.F](#)):

- The city worked with local partners to secure funding for the SH 119 corridor. Planned regional BRT, express/managed lanes, and a commuter bikeway will result in improved multimodal access and faster and more reliable travel times to address growing congestion, improve safety and support economic vitality in the Northwest area. Near-term improvements within the city of Boulder include the final design and construction of Business Access and Transit lanes along 28th Street between Valmont Road and Iris Avenue.
- In 2019, the city was awarded Denver Regional Council of Governments (DRCOG) funds to complete missing links on the multi-use path system along East Arapahoe. Longer term, the city is engaged with the SH 7 Coalition to advocate for regional corridor funding.



Initiative 7 - Action Item Links

7.A - Advance Designs and Secure Funding for Regional Corridor Projects
 7.B - Increase RTD Service Along the US 36 Corridor
 7.C - Maintain and Expand the FLEX Service to Fort Collins

7.D - Promote Existing and New Ridesharing Services
 7.E - Participate in Regional Partnerships and Coalitions
 7.F - Plan, Design, and Implement High-Quality BRT

What's Next

The 2020 Snapshot of Measurable Objectives shows that while the City of Boulder has made significant progress in some areas, work remains to meet our transportation goals. One of the biggest challenges to meeting these goals is limited funding, including in regional transit service.

Moving into 2021 and beyond, the Transportation and Mobility Department will implement the action items outlined in the 2019 TMP to meet our goals and continue to explore additional funding opportunities to help accelerate progress toward them. Some of the key initiatives already in progress include:

- Implementing the Vision Zero Action Plan
- Partnering on regional multi-modal corridors
- Improving transit fare and pass options, including the EcoPass
- Pursuing additional funding options
- Construction of key projects, including improvements on North Broadway, the 30th Street/Colorado Underpass and 19th Street

We recognize the need to develop innovative solutions as we take into account the changing landscape of how people will travel in a post-pandemic world. As a city, we are resilient in the face of adversity. And as staff, we will continue to maintain and improve our existing system, working diligently to make the built environment safer and more equitable for all residents.



Appendix

Acronyms

AMPS - Access Management and Parking Strategy

BAT - Business Access and Transit

BECO - Business EcoPass

BRT - Bus Rapid Transit

COB - City of Boulder

CU - University of Colorado

DRCOG - Denver Regional Council of Governments

EV - Electric Vehicle

GHG - Greenhouse Gas

NECO - Neighborhood EcoPass

NFRMPO - North Front Range Metropolitan Planning Organization

NSMP - Neighborhood Speed Management Program

RTD - Regional Transit District

SH - State Highway

SOV - Single-Occupant Vehicle

TAB - Transportation Advisory Board

TMP - Transportation Master Plan

VMT - Vehicle Miles Traveled

VZAP - Vision Zero Action Plan

VZ - Vision Zero



COVER SHEET

MEETING DATE

January 19, 2021

INFORMATION ITEM

City of Boulder 2020 Multi-Hazard Mitigation Plan Progress Report

PRIMARY STAFF CONTACT

Pam Davis

ATTACHMENTS:

Description

- ▣ **City of Boulder 2020 Multi-Hazard Mitigation Plan Progress Report**



INFORMATION ITEM MEMORANDUM

To: Mayor and Members of Council

From: Chris Meschuk, Interim City Manager
Mike Chard, Director of Boulder Office of Emergency Management
Pam Davis, Senior Management Analyst

Date: January 19, 2021

Subject: Information Item: 2020 Annual Hazard Mitigation Plan Update Report

EXECUTIVE SUMMARY

This memo provides City Council members with the results of the 2020 annual review of the city's Multi-Hazard Mitigation Plan.

Boulder's Multi-Hazard Mitigation Plan (the Plan) was prepared pursuant to the requirements of the Federal Disaster Mitigation Act of 2000 to ensure the city would be eligible for the Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation and Hazard Mitigation Grant Program. The most recent Multi-Hazard Mitigation Plan was adopted by City Council on May 1, 2018.

The annual review is required to receive credit in the National Flood Insurance Program's (NFIP) Community Rating System (CRS) and remain eligible for federal grants. Per the CRS credit criteria, the plan is to be reviewed annually and fully updated every five years. To achieve CRS credits and maintain grant eligibility, the annual review must be presented to the governing body and made available to the public online. No action is required by council.

The 2020 plan review (**Attachment A**) was completed in the fourth quarter of 2020. More information about Boulder's [multi-hazard mitigation strategy](#) can be found on the city's website.

FISCAL IMPACT

Implementation of the actions in the Multi-Hazard Mitigation Plan is funded by existing approved budgets.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Property damage, transportation and utilities disruption from natural and man-made disasters can cause substantial economic costs. Action items identified in the Plan were developed to reduce the risk to life and property and disruptions to business.
- Environmental: Implementation of the recommended Plan's action items will help reduce damage to the environment resulting from natural and man-made disasters.
- Social: Implementation of the Plan's action items will help reduce the risk to life and damage to property along Boulder Creek and its fifteen tributaries, including at-risk populations.

BACKGROUND

The NFIP CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. Flood insurance premium rates are discounted based on the community's efforts to reduce flood losses beyond the minimum requirements. The City of Boulder participates in the CRS program and currently has a community rating of 5 out of 10 (1 being the highest rating). This rating provides an annual flood insurance premium discount of up to 25 percent for property owners. The City's rating has steadily improved since 2010.

Each participating community must submit documentation to FEMA for annual recertification. Community ratings can change depending on the current level of flood mitigation activities. One of the program elements the City of Boulder elected to participate in was the preparation of a Multi-Hazard Mitigation Plan. The Plan is intended to be a dynamic, living document. As a result, to achieve CRS credits and maintain grant eligibility, the Plan must be reviewed on an annual basis, presented to the governing body (council) and made available to the public online.

ANALYSIS

The City of Boulder Multi-Hazard Mitigation Plan has three goals:

1. Increase community awareness of Boulder's vulnerability to natural hazards;
2. Reduce vulnerability of people, property and the environment to natural hazards; and
3. Increase interagency capabilities and coordination to reduce the impacts of natural hazards and increase community resiliency.

In the [full Plan](#), each of the actions includes a description of the issue, background context, identification of alternatives if applicable, the responsible office, the priority, cost estimate, estimated benefits, potential funding sources and schedule. **Attachment A** presents the 2020 annual review of the Multi-Hazard Mitigation Plan.

NEXT STEPS

The 2020 annual update will be submitted to FEMA for credit with the community's annual CRS recertification. Per the CRS credit criteria, the Plan is to be reviewed annually through its life cycle ending in 2023. A new combined city/county Hazard Mitigation Plan is planned for adoption in 2021 to streamline and better address regional efforts into the future.

ATTACHMENT

Attachment A – City of Boulder 2020 Multi-Hazard Mitigation Plan Progress Report



Hazard Mitigation Update Report 2020

The City of Boulder Hazard Mitigation Plan was adopted by City Council on May 1, 2018. Having a Hazard Mitigation Plan qualifies the City to participate in pre-disaster and post disaster mitigation grant funding programs. More importantly, the process used to create the plan incorporated hazard identification, risk analysis, community participation and mitigation project development as the core planning components. Once a plan is completed a yearly progress report is required by FEMA for communities who have an adopted Hazard Mitigation Plan. In addition, the report also adds points that are used to determine the City's rating under the Community Rating System which sets flood insurance rates. This report is distributed to the media, made available to the public and must be reviewed and approved by the City Council. Copies of this report and the 2018 Plan Update are available for review on the City of Boulder website or at BoulderOEM.com.

The original Hazard Mitigation Planning process was managed by The City of Boulder Public Works Department and included representatives from communities throughout the City of Boulder, Boulder County, non-profit agencies, Boulder County departments, members from the State Department of Homeland Security and Office of Emergency Management Mitigation Division and FEMA Region 8. The plan was adopted officially in May 1, 2018 and the plan will expire in 2023. Currently, the plan is being integrated with the Boulder County Hazard Mitigation Plan update process to increase whole community mitigation projects. The update process is being managed by the Boulder Office of Emergency Management and it will be submitted to FEMA for adoption in 2021.

Mitigation Plan Goals

Goal 1: Increase Community Awareness of Boulder's Vulnerability to Natural Hazards

- Objective 1.1: Inform and educate the community about the types of hazards the City of Boulder is exposed to,
- where they occur, and recommended responses

Goal 2: Reduce Vulnerability of People, Property, and the Environment to Natural Hazards

- Objective 2.1: Reduce impacts of hazards on residents and vulnerable populations in the community.
- Objective 2.2: Reduce impacts to critical facilities and services
- Objective 2.3: Reduce impacts to existing buildings and infrastructure to the extent possible
- Objective 2.4: Reduce impacts to future development and infrastructure to the extent possible
- Objective 2.5: Reduce impacts to the city's natural and historic resources
- Objective 2.6: Reduce impacts to public health

Goal 3: Increase Interagency Capabilities and Coordination to Reduce the Impacts of Natural Hazards and Increase Community Resiliency

- Objective 3.1: Continue to collaborate and coordinate with other agencies on planning, projects, hazard response, and funding opportunities.
- Objective 3.2: Minimize economic impacts of natural hazards.

Mitigation Action Title	Jurisdiction	Priority	Goals	Hazards	Status	Update
Multi-Hazard Actions						
Boulder County						
Enhance critical facility data	Risk Management	Low	Goal 2, 3	All Hazards	In Progress	2020 update- working with PW GIS to finalize critical infrastructure list. Expected completion Q2 2021
Emergency back-up power	Facilities and Asset Management	High	Goal 2	All Hazards	Completed	Emergency Generator transfer switch installed at East Boulder Recreation Center. This allows for a generator power source to be used to supply the facility during power outages.
Hazard education	Boulder OEM, Fire, Police, CRS	Medium	Goal 1,2,3	All Hazards	In Progress	2020 Update- The Disaster Preparedness Guide is now available in Spanish and is distributed during community preparedness programs.
Increase outdoor and individual warning systems capacity available	Boulder OEM	High	Goal 1	All Hazards	In Progress	<p>2019 Update- In 2019 Boulder OEM achieved FEMA-Integrated Public Alert Warning System (IPAWS) access. This capability permits Boulder OEM and Police and Fire Dispatch to launch public warnings using NOAA Weather Radio, Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA). The system will be live in late 2019 or early 2020 upon final approval by FEMA once OEM completes the functional test of the system.</p> <p>In 2019 Boulder OEM increased capacity to provide public messaging, alerting and warning with non-English speaking residents. Translation services are now available to the EOC call center, evacuation door hangers created and distributed to the Police Department.</p>
Outreach efforts associated with BoCo911alert.com	Boulder OEM	High	Goal 1	All Hazards	In Progress	2020 Update- Boulder OEM continues to promote community sign-up in the telephone emergency alert system on the BoulderOEM.com website and during public education campaigns.
Develop updated city continuity of operations and facility emergency evacuation plans	All city departments	High	Goal 1,2,3	All Hazards	In Progress	2020 Update- All city departments have updated facility emergency plans (FEP) and department continuity of operations plans (COOP).
Prepare pre-disaster FEMA forms	Boulder OEM	Low	Goal 1,2,3	All Hazards	No action taken to date	2020 Update- Boulder OEM made no progress in this area due to the extensive COVID 19 response.

Increase Public Awareness of Flood Risk and Safety Measures	Boulder OEM	High	Goal 1,2,3	Flood	In Progress	In 2020 BOEM was unable to attend and support any Better together Programs due to the COVID response. In addition, COVID prevented the gathering of the community to hold the courses. IN 2021 an online version of this program is being considered. 2019 Update- Boulder OEM is working with city departments to deliver “Better Together Programs” each year. In 2019 the program was delivered in October and will continue each year with additional deliveries as budget and schedules permit.
Enhance outdoor warning systems	Boulder OEM	Low	Goal 1,2,3	All Hazards	No action Recommend at this time but should be evaluated every 2 years based on development	2019 -2020 Update-The outdoor warning system is tested weekly using the silent testing program developed in 2017. The system is physically tested during the annual Outdoor Warning System test from April to August. The current capability covers high density outdoor areas such as CU, along Boulder Creek, the Soccer Park and Western edge of the City.
Maintain urban tree canopy	City Parks and Recreation, Forestry Division	High	Goal 1,2	All Hazards	In Progress	2020 Update – Boulder Forestry continues to implement portions of the Urban Forest Strategic Plan on an annual basis. The city LiDAR data is expected Q4, 2021 and will be used for the tree planting prioritization and diversity project to determine the change in urban tree canopy since 2013 and prioritize tree planting based upon urban heat island areas, stormwater runoff and equity variables. In 2019-2020, Boulder Forestry planted 836 trees on public property; 1669 public trees were removed however due to pest issues, weather related events and safety related concerns and many more on private property and through both city and private construction projects. A major snowstorm on 9/9/2020 necessitated emergency storm damage pruning to over 2500 public trees and a city-wide branch pickup collecting over 52,500 cubic yards of branches; total cost for the event exceeded \$800,000. Tree Trust activities and the tree sale and giveaway were canceled in 2020 and for 2021 due to COVID.
Relocate fire station outside 100-year flood risk	FAM / Fire and Rescue	Medium	Goal 2	Flood	In progress	Land has been acquired and fire station architectural design is the next step.

Implement Wildland Fire Mitigation Program for Watersheds	City of Boulder Utilities	Medium to High	Goal 1,2,3	Wildfire	Completed	2019 Update- The Wildfire Erosion and Sediment Transport Tool was completed in May 2019. The Tool predicts post-fire erosion and sediment transport to the water supply and recommends a rehabilitation plan depending on the fire location, extent, and severity. Staff continue to work with local, state, and federal partners on wildfire planning efforts.
Wildfire Management Plan	OSMP / Fire	Medium	Goal 1,2,3	Wildfire	In Progress	2020 Update- During 2020 OSMP and City Fire staff made progress towards identifying Values at Risk, turnback standards, and Best Management Practices for fire response on City lands. Work will continue in 2021 and efforts may be rolled into the development of an updated City of Boulder CWPP.
Update Community Wildfire Protection Plan	OSMP / Fire	Medium	Goal 1,2,3	Wildfire	In Progress	2020 Update- An updated CWPP is being drafted. This document will outline fire mitigation work completed since the development of the original 2007 CWPP as well as identify new projects and collaborative efforts.
Implement Community Wildfire Protection Plan	OSMP / Fire	High	Goal 2	Wildfire	In Progress	2020 Update- Most outlined projects from the original 2007 CWPP have been completed. In 2021 crews will focus on additional thinning work in “High Hazard” areas called out in the CWPP including Chautauqua, Shanahan, and Kohler Mesa. OSMP and City Fire staff will continue to work towards updating the CWPP.
Implement forest ecosystem management plan	OSMP	High	Goal 2	Wildfire	In Progress	2020 Update- City OSMP continues to implement portions of the Forest Ecosystem Management Plan on an annual basis. To date, a total of approximately 2000 acres have been thinned as part of forest health and fire mitigation projects on city OSMP lands. Roughly 75% of all the projects outlined in the plan are complete. Prescriptive thinning and burning will continue in 2021 with collaborative projects planned with OSMP and City Fire. OSMP will be increasing staffing in 2021 and will focus efforts in the City WUI.
Review City landscape codes for drought	Development Review	Medium	Goal 2	Drought	In Progress	2020 Update- Boulder landscape architecture staff regularly promotes and encourages the use of drought tolerant and native plant material in all development projects within public and private property. 9-9-12(d)(14 and 15) BRC 1981 define water conservation and xeriscape best practices to be mandated and

						incorporated into landscape strategies as plans are reviewed and approved. Additional analysis regarding the success of these standards may be needed, however the current department work plan does not include a review of these standards in 2021.
63 rd St. WTP Electrical and High Service Pump Project	City of Boulder Utilities	High	Goal 2	All Hazards	In Progress	Planned and prioritized in 2020, a new project to replace critical equipment at the city's 63 rd St drinking water treatment facility will move into the design phase in 2021, to improve reliability, redundancy, and resiliency of both the plant and the drinking water treatment system as a whole. Electrical distribution (load center, conductor, and motor control centers), high service pumping, and other aging equipment are to be replaced beginning in 2023.
Electrical Distribution Equipment Upgrades at the WRRF	City of Boulder Utilities	Medium	Goal 2	All Hazards	Completed	Critical electrical distribution equipment (load center and motor control centers) were replaced in 2020 at the city's Water Resource Recovery Facility, to address aging infrastructure concerns and improve the reliability of electricity feed to essential treatment systems.
Implement flood mitigation plans	City of Boulder Utilities	High	Goal 2	Flood	In Progress	2020 Update- The preliminary design of flood mitigation improvements is underway for Gregory Canyon Creek. City Council provided direction for city staff to proceed with Phase 1 preliminary design for the South Boulder Creek Flood Mitigation project.
Prioritize flood hazards	City of Boulder Utilities	High	Goal 2	Flood	No Action Taken to Date	2020 Update- The prioritization work is planned to follow the Comprehensive Flood and Stormwater Master Plan update.
Update the Comprehensive Flood and Stormwater Master Plan	City of Boulder Utilities	High	Goal 2	Flood	In Progress	2020 Update- Utilities staff has begun work on an update to the Comprehensive Flood & Stormwater (CFS) Master Plan. A community working group has been selected to participate in this process.
Develop flood mitigation plans following mapping updates	City of Boulder Utilities	High	Goal 2	Flood	In Progress	2020 Update- Flood mitigation plans are currently being updated for several drainageways throughout the city including: Upper Goose Creek, Two-mile Canyon Creek, Skunk Creek, Bluebell Canyon Creek and King's Gulch.

Acquire High Hazard Zone Properties	City of Boulder Utilities	Medium	Goal 1,2	Flood	In Progress	2020 Update- Properties located in the city's High Hazard Zone are periodically purchased to help facilitate drainageway improvements throughout the city when they become available. 712 Pleasant was purchased in 2019 and was deconstructed in 2020 to permit Gregory Canyon Creek drainageway improvements to convey flows associated the 10-year storm event.
Update City's floodplain maps	City of Boulder Utilities	Medium	Goal 1,2	Flood	In Progress	2020 Update- A floodplain mapping study has begun for the Sunshine Canyon Creek drainageway.
Implement a community assisted floodproofing focusing on critical facilities	City of Boulder Utilities	Low	Goal 2,3	Flood	No Action Taken to Date	2020 Update- City development services staff continue to promote flood hazard awareness for critical facilities through ordinance requirements for emergency management plans. There is currently little to no budget allocated for community assisted floodproofing programs.
Colorado Post-Wildfire Playbook	City of Boulder Utilities	Medium	Goal 2,3	Wildfire	Completed	The playbook is intended to help water utilities better plan for wildfire impacts to water supplies before, during and after a fire by developing a critical contacts list, establishing early communication with local and regional responders, and understanding in advance funding opportunities and requirements. Staff has completed the planning steps of the playbook.
Risk and Resilience Assessment and Drinking Water Emergency Response Plan Updates	City of Boulder Utilities	High	Goal 2,3	All Hazards	Completed	Per the American Water Infrastructure Act of 2018 requirements, staff completed the Risk and Resilience Assessment, which determines the risk associated with potential malevolent or natural threats to the city's drinking water assets, and updated the Emergency Response Plan, which facilitates and expedites response to events that could impact the city's drinking water.
Update City's Drought Plan and identify and implement priority projects identified in the Drought Plan	City of Boulder Utilities	High	Goal 1,2,3	Drought	In Progress	2020 Update- Drought plan revisions have been initiated by assessing drought triggers and water use reductions through updated water supply modeling that also includes climate change assessments. Drought plan assessments and revisions will continue into 2021.



COVER SHEET

MEETING DATE

January 19, 2021

BOARDS AND COMMISSIONS ITEM

Nov. 4, 2020 Environmental Advisory Board Meeting Minutes

PRIMARY STAFF CONTACT

Brett KenCairn, Senior Sustainability and Resilience Policy Advisor

ATTACHMENTS:

Description

- ▣ **November 4, 2020 Environmental Advisory Board Minutes**

**CITY OF BOULDER, COLORADO
BOARDS AND COMMISSIONS
MEETING SUMMARY**

NAME OF BOARD/COMMISSION: Environmental Advisory Board

DATE OF MEETING: November 4, 2020

NAME/TELEPHONE OF PERSON PREPARING SUMMARY: Heidi Joyce,
303-441-3274

NAMES OF MEMBERS, STAFF, AND INVITED GUESTS PRESENT:

Environmental Advisory Board Members Present: Justin Brant, Miriam Hacker, Martin Hoerling, Susan Peterson, Michael SanClements

Environmental Advisory Board Members Absent: None

City Staff Members Present: Brett KenCairn, Heidi Joyce

MEETING SUMMARY:

1. CALL TO ORDER

Environmental Advisory Board (EAB) Chair, **J. Brant**, declared a quorum and called the meeting to order at 6:10 p.m.

B. KenCairn reviewed the virtual meeting protocols.

2. APPROVAL OF MINUTES

On a motion by **M. SanClements**, seconded by **J. Brandt**, the Environmental Advisory Board voted **5-0** to approve the September 2, 2020 meeting minutes.

3. PUBLIC PARTICIPATION

None.

4. PUBLIC HEARING ITEMS

None.

5. DISCUSSION ITEMS

A. Brief discussion of the election results on 2C and 2D

2C – Public Service Company Franchise

According to unofficial results from the Boulder County Clerk's Office, Boulder voters are likely to pass a measure that will enter the city into a new franchise agreement with Xcel Energy. If the result holds as expected, Boulder will pause its efforts to create a local electric utility and Boulder residents and businesses will remain Xcel customers in a new partnership.

2D – Repurpose the Utility Occupation Tax

According to unofficial results from the Boulder County Clerk's Office, voters are likely to pass a funding measure that will supply approximately \$2 million in funds for the partnership, re-directing funds that have previously supported municipalization. These funds will support innovative projects and pilot programs aimed at addressing the city's climate and energy goals.

Over the next several months, a new staff team from the city and Xcel will meet to coordinate and plan the terms of franchise settlement agreement, including energy-related projects and pilot programs, such as undergrounding, distributed generation and resilience work. The EAB can anticipate hearing more about the Xcel Partnership in Q1 2021.

The Climate Initiatives Department is working on a new climate action strategic plan and intends to bring the plan forward to council in the May 2021 timeframe. The EAB will be engaged in this effort.

Board Discussion

- Will Boulder's Climate Action goals change because of the franchise agreement with Xcel?
 - **B. KenCairn** said the goals will be updated. Next steps include framing and planning around what the goals should be and determining how to engage the community in the process.
- Bringing the climate action plan to council in May 2021 seems late, especially since Council declared a climate emergency back in July 2019.
 - **B. KenCairn** said the new climate action plan will look at the objective of climate stabilization and changing systems globally. Achieving a goal within our community does not always translate when considering the impact of hitting certain emissions targets within our boundaries versus systems change.
 - There was a suggestion to schedule an item for a future EAB meeting, a discussion on renewables (solar, wind, hydro, nuclear) – the benefits and long-term effects of renewables on the environment and a more in depth look at the life cycle analysis of carbon benefits.

B. Follow-up discussion on air quality discussions following meetings with M. Hacker

M. Hacker prepared and sent out a statement to EAB – a follow-up to the air quality discussion that occurred at the last EAB meeting.

City staff and **M. Hacker** met with Boulder County to discuss air quality and the severity of impacts associated with smoke. There was a suggestion to address this issue on a regional basis. A next step is to schedule a meeting with regional air quality professionals from other public jurisdictions. In response to what was discussed at the meetings with Boulder County, **M. Hacker** said there is so much more to do and many resources available to tap into.

B. KenCairn spoke with Cindy Copeland at Boulder County, who recently met with the City of Fort Collins. Fort Collins is working on pursuing an EPA air quality and wildfires grant

opportunity. Fort Collins expressed interest in partnering with Boulder County, and potentially the City of Boulder, on this grant opportunity. **B. KenCairn** will respond to Cindy Copeland, and will copy **M. Hacker**, requesting that the city continue to be a participant in this air quality and wildfire climate change discussion.

B. KenCairn thanked **M. Hacker** for bringing forward the topic of air quality and the severity of impacts associated with smoke to EAB.

M. Clements mentioned that Air Quality monitoring is now included on weather apps (Apple, Android).

M. Hoerling suggested installation of a visibility camera monitoring system for fires.

B. KenCairn asked the board to suggest issues/ gaps on this topic that are not currently being recognized or addressed in information or knowledge (climate science models of air quality in the context of climate change). Follow up discussion on this topic could be scheduled for a future EAB meeting.

M. Clements shared links related to this topic with EAB:

- National Academies of Sciences, Engineering, Medicine *Wildfire Fires: Toward Improved Understanding and Forecasting of air Quality Impacts – A Workshop*
<https://www.nationalacademies.org/event/09-23-2020/wildland-fires-towards-improved-understanding-and-forecasting-of-air-quality-impacts-a-workshop>
- High Performance Wireless Research and Education Network
<https://hprwen.ucsd.edu/>

C. Review and vote on staff grant proposal to County Sustainability Program

The Environmental Sustainability Matching Grant Program provides an opportunity for municipalities in the county to undertake environmental sustainability priorities within their communities. The city plans to submit a grant application to Boulder County for two proposals. The 2021 proposal includes the development of a local ecosystem's evaluation tool, and the enhancement of our zero-waste efforts in the form of a reusable take-out-container program. Both concepts have been evaluated using an internal process and discussed with Boulder County staff for their ability to be replicated and scaled.

Board Discussion

Zero Waste Reusable Boulder Takeout Container Program

- How will reusable cups work in a COVID world?
B. KenCairn said the timing of this program is 6-12 months out.
- An increase in indoor and outdoor zero waste bins in public places around the city is encouraged by the board.
B. KenCairn said the city encourages self-reporting of issues related to zero waste collection points. For zero waste issues and concerns, please email zerowaste@bouldercolorado.gov. For general city complaints, please visit Inquire Boulder at <https://user.govoutreach.com/boulder/support.php?cmd=shell>.

- Does the pilot include recruitment and participation of a selection of city businesses?
B. KenCairn said the pilot for the vessel portion of this project is essentially rolled out, this proposal takes it to scale and encourages businesses to sign on.
- Is there a way to seek assistance from volunteers/ students to provide support for zero waste disposal services (similar to Lyons Planet Bluegrass festivals)?
B. KenCairn said volunteers are deployed for major events and at the Farmer's Market.

Carbon & Ecosystem Services Management Systems Development

- **M. Clements** shared a relevant link to this discussion with EAB: Aligning Agriculture and Climate Policy
<https://cpb-us-e1.wpmucdn.com/blogs.cornell.edu/dist/9/7784/files/2017/11/NatureClimate-7-307-309-2017-Chabbi-2lh4vs0.pdf>
- How does this proposal relate to the loss of wood from the urban forest canopy due to snowstorms and windstorms?
B. KenCairn is working with Taddiken Tree Company about the possibility of hosting bioenergy, bio-char technology that could start to convert this material into useful co-products.
- The urban canopy is important for shading and cooling effects and helps mitigate effects of warming temperatures. Does this project tie in concerns of urban heat islands urban forests?
B. KenCairn said not yet, but this is an area where EAB can help identify critical research questions, with next steps to find funding and work with researchers to answer the critical questions.
- There was a suggestion to connect with the Planning Department on biophilic design. This could help address the urban heat island issue and could help to create carbon sequestration.
- There was some skepticism expressed for the portion of the project related to ecosystem services (quantifying ecosystem services).
B. KenCairn said it can be thought of as a decision support tool if there were choices of how to capture carbon.

On a motion by **J. Brandt**, seconded by **M. Hoerling**, the Environmental Advisory Board voted (5-0) to support inclusion of two proposals (Zero Waste Reusable Boulder Takeout Container Program, and Carbon & Ecosystem Services Management Systems Development) in the 2021 Boulder County Environmental Sustainability Matching Grant Application.

D. Review Results of the September 2 Board Retreat

- Prioritize the Board's Focus Areas for 2021 - Mural Board**
- Discuss the Board's Annual Letter to City Council and Board terms and new board member selection process**

Board Discussion

The board agreed to assign EAB members to draft sections of the board's annual letter to City Council.

Key Issues for the Environmental Advisory Board in 2020. **J. Brandt**

- EAB has taken a more pro-active roll on certain issues that EAB believes have fallen through the cracks.
- Engagement around prairie dogs and council's consideration of EAB input in reaching a decision on this issue.
- Air Quality – positive cohesion between Boulder County and the City of Boulder to work with other neighboring jurisdictions to put together a smoke management plan to protect our target population against particulate emissions.

What is your board looking forward to in 2021? **J. Brandt**

Continuing work on areas of priority for EAB:

- Air Quality – **M. Hacker**
- Xcel Franchise Agreement – **S. Peterson**
- Climate Action Plan – **M. Hoerling**
- Soil and Sequestration Issues – **M. Clements**
- Urban Heat Island – **M. Clements**

A link to the shared *Public Letters* Google Doc will be sent to EAB members.

The board requested the notes from the council meeting, where last year's Boards and Commissions annual letters were discussed.

H. Joyce will send EAB an email reminder with due dates for the write-up of the EAB annual letter (due in Google doc by Nov. 30).

B. KenCairn will send information on the 2021 Boards and Commissions recruitment process to **J. Brandt** and **M. Hoerling** once the information is available.

6. OLD BUSINESS/UPDATES

None.

7. MATTERS FROM THE ENVIRONMENTAL ADVISORY BOARD, CITY MANAGER AND CITY ATTORNEY DEBRIEF MEETING/CALENDAR CHECK

The next meeting is scheduled for Wednesday, Dec. 2, 2020.

8. ADJOURNMENT

The Environmental Advisory Board adjourned at 8 p.m.

Approved:

Chair

Date

12/7/20



COVER SHEET

MEETING DATE

January 19, 2021

BOARDS AND COMMISSIONS ITEM

October 12, 2020 Transportation Advisory Board Minutes

PRIMARY STAFF CONTACT

Meredith Schleske, TAB Secretary

ATTACHMENTS:

Description

- ▣ **October 2020 Transportation Advisory Board Minutes**

**CITY OF BOULDER
BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING
MINUTES**

Name of Board/ Commission: Transportation Advisory Board
Date of Meeting: October 12, 2020
Contact Information Preparing Summary: Meredith Schleske 303.441.3204
Board Members Present: Tila Duhaime; Mark McIntyre, Alex Weinheimer, Lauren Lambert, Robert Hutchinson
Staff Present: Erika Vandenbrande, Director for Transportation and Mobility Bill Cowern, Deputy Director for Transportation and Mobility, Acting Principal Transportation Engineer Natalie Stiffler, Deputy Director for Transportation and Mobility Chris Hagelin, Senior Transportation Planner, Acting GO Boulder Manager Danny O'Connor, Senior Transportation Planner David "DK" Kemp, Senior Transportation Planner Amy Lewin, Senior Transportation Planner Ryan Noles, Senior Transportation Planner Jean Sanson, Senior Transportation Planner Allison Crump, Transportation Planner Jenny Godwin, Associate Transportation Planner Robyn VanDerLeest, Traffic Sergeant Meredith Schleske, Board Secretary
Others Present: Brandon Crockett Smith, Assistant Director, Sustainable Transportation Program, CU Boulder Clark A. Rider, Sustainable Transportation Specialist, CU Boulder Heidi VanGenderen, Chief Sustainability Officer, CU Boulder Kevin Crouse, Executive Director, Boulder Bike Share
Type of Meeting: Advisory/ Regular
Agenda Item 1: Call to Order [6:05 p.m.] Instructions to Virtual Meeting Participants (not an agenda item) – Jenny Godwin, technical host reviewed rules and technical operations on the virtual platform.
Agenda Item 2: Approval of September 2020 Minutes [6:09 p.m.] Motion: Approval of September 2020 Minutes as amended agenda item 11 – change Table Mesa “underpass” to “overpass”. Motion: McIntyre Second: Hutchinson 5:0 Motion Passes.
Agenda Item 3: Public Comment [6:12 p.m.] <ul style="list-style-type: none"> Steven Haydel – Vision Zero data in Florida indicates that fatal and incapacitating crashes are holding steady; we need to revisit what we can actually do to reduce in Boulder. Appreciate 20 is Plenty – thanks for getting that through. Need initiatives with high value signals and intersections, incremental changes are not working. Regarding the e-scooters survey, we are behind on Boulder Creek Path – they’re already out there. Ryan Welsh – thanks for your work, especially 20 is Plenty. Quick story about coming from different direction than partner and each was almost hit by a driver, partner by someone turning right on green while she had the signal and he had watch signal by someone turning right on red at different intersection. Could convince less experienced riders to quit. Need big change, can afford to change rules i.e. turning drivers, repurpose space for safe travel for all modes, should be able to afford. Make it safer for families. Lisa White – serving on Pedestrian Action Committee (PAC), speaking to Boulder Bike Share strategic plan and regulation of modes on sidewalks and paths. Bikeshare is for public good, offers options, prefers community-based provider. Invest in creating safe routes and more of them. Micromobility should be allowed on any street sidewalks and paths to give options for travel. Safe routes that people can take safely and legally are critically important, pursue less expensive, take bold steps.

Agenda Item 4: Monthly Update**[6:21 p.m.]****A. COVID-19 Staff Update**

Erika Vandenbrande made the update to the board. Emails regarding HOP and crash data were sent to TAB members. HOP ridership is down 75% from April to September as are vehicle and pedestrian crashes and injuries. TAB request to receive reports earlier and make visible to the public.

B. Safe Streets Boulder - Vision Zero (VZ) Action Plan, VZ Crash TAB Discussion

- Comments regarding no discussion or attention paid to major arterials, exemplary work on left turn crashes, need to address high speed.
- Opinion expressed that engineering failures occurred with Table Mesa, missed opportunity to narrow 30th Street and not considering failsafe protected bike lanes, seems we can do more with our resources.

Agenda Item 5: Community Check-in**[6:39 p.m.]**

- Comment that Colorado District 13 House candidate Judy Amabile is very interested in VZ, legislature may be moving forward regarding potential photo radar traffic enforcement.

Agenda Item 6: Staff briefing and TAB feedback regarding Boulder Bikeshare Strategic Operational Plan Years 2021-2023**[6:43 p.m.]**

David Kemp made the report to the board with support from Kevin Crouse.

Executive Summary

The purpose of the item is to update TAB on the Boulder Bike Share (BBS) Strategic Planning process, and to receive feedback on micromobility provider options as part of Boulder's Shared Micromobility Program.

On January 28, 2020 staff presented information and a recommendation to continue to invest in Boulder Bike Share as the sole bikeshare provider in the City of Boulder. Since then, Boulder Bike Share underwent a Strategic Planning process, and council adopted two ordinances to allow for the business licensing of dockless e-bikes and e-scooters in the City of Boulder. With new information from Boulder Bike Share's strategic planning process, and the recent changes to the local regulatory environment to include e-bikes and e-scooters in the shared micromobility program, staff has been working with key stakeholders to develop the framework of a Shared Micromobility Program that will launch in Spring 2021. In addition to the changes to the city's regulatory landscape, the city's budget has also been significantly impacted by COVID-19 and provides staff with an opportunity to consider the appropriate level of financial investment in a shared micromobility program.

The Shared Micromobility Program will seek to provide a variety of shared mobility options including e-bike and e-scooter share. Currently, the city contracts with Boulder Bike Share, a local non-profit organization, to provide bikeshare service to the community using B-Cycle LLC's platform. Staff is evaluating scenarios that include to continue to contract with Boulder Bike Share, to consider contracting with a national/international private operator for bikeshare and other micromobility services in the community, or a hybrid approach.

At this point, staff has not identified a preferred scenario as we are seeking feedback from TAB on the potential service provider scenarios and the criteria used to evaluate each option as we prepare of the upcoming study session with Council on October 27th. Following the study session and further evaluation, TAB's feedback will inform staff's recommendation and eventually the selection of a provider(s) through the Request for Proposal process planned for later this year.

TAB Input

1. Does TAB have any questions or comments regarding the results of the Boulder Bike Share strategic planning process?
 2. Does TAB have any feedback on the potential service provider options, and the criteria used to evaluate each option?
 3. Does TAB have a preferred scenario now that we can include in the feedback to Council?
- Questions regarding volume and goals, number of rides we are trying to shift, why Boulder is enticing to providers.
 - Comment that Boulder brand will not last to provide the gains that the providers need.
 - Inquiries about what we learned from lack of interested dockless bikeshare provider and how will we position with request for proposal (RFP) for bikeshare, where e-scooters will be allowed to operate, how to encourage diversity of types of trips, how many single occupancy vehicle (SOV) trips e vehicles will displace. Also rideshare (Lyft, Uber).

- Suggestions for a working group, consider ability to connect with CU campus. In evaluating bids, how flexible and adaptive is their model, include timeframe in proposal. Encouragement to choose a path and go.
- Comments that revenue/ridership is single dominant criterion – request for numbers and probabilities, scooter company employees’ vision of what successful program looks like are interesting, voice of industry professionals is underrepresented.

TAB representative requested to attend the 10/27/2020 Study Session regarding micromobility – Hutchinson; Lambert backup.

Agenda Item 7: Staff briefing and TAB feedback regarding Regulation of Electric- and Human-powered Vehicles on Streets/Sidewalks/Paths [7:56 p.m.]

David Kemp made the report to the board.

Executive Summary

The purpose of this memo is to examine where human and electric-powered mobility devices can be legally operated on sidewalks, streets, and multi-use paths. The micromobility devices under review include devices, such as e-scooters, e-skateboards, hoverboards, one-wheels, skateboards, bicycles, and rollerblades. The review of our current ordinances is necessary to reassess our current dismount zones on sidewalks ordinance and to also take a proactive stance due to the proliferation of electric-powered mobility devices and the plan to introduce new devices to the city’s Shared Micromobility Program.

Based on research, internal coordination and input from the community engagement process, staff is exploring several potential changes to ordinances including allowing electric-powered devices to be operated on multi-use paths and on sidewalks, except in dismount zones, and allowing skateboards, rollerblades, and electric-powered devices to be used in the street.

Staff is seeking TAB’s input on the facility types where specific devices, both privately-owned and shared, should be allowed to legally operate.

TAB Input

1. What are your questions and concerns regarding expanding the use of human-powered devices (e.g., bikes, e-bikes, and skateboards) on sidewalks?
 2. What are your questions and concerns regarding the use of electric-powered devices on multi-use paths?
 3. What are your questions and concerns regarding the use of human-powered skateboards and electric-powered devices on residential streets in the bike lane other streets?
- Appreciation for improved map.
 - Questions regarding where signage should be, whether education will be effective.
 - Comments supporting contra-bikelanes in dismount zone, partnering with general improvement districts (GIDs) to provide clear signage, inappropriate to bike on sidewalks, combine with education, focus on infrastructure, ordinance is critical in event of crash
 - General support for flexibility in ordinance and staff direction to continue exploring the issue.

Agenda Item 8: Matters [8:34 p.m.]

A. Matters from Staff/Non-Agenda

- 2021 Budget Update (Vandenbrande) – reviewed revenue sources, 2019 to 2021 projections, 2020 and anticipated 2021 reductions in Transportation and Mobility. Detailed where funds are allocated for 2021. After approval, will develop work plans to optimize, bring to TAB for input to improve.
 - Question regarding Transportation Demand Management (TDM) reduction – HOP service, temporary staff, vanpool subsidy not being used during COVID restrictions, business EcoPass rebate, RTD rebates not being used.
- Snow and Ice Management Update (Hayden) [8:51 p.m.]
 - Records were broken in 2020, will do best possible to keep current service levels. Have now exceeded 2021 budget.
 - Questions regarding how to we modify or change priorities to clear sidewalks over completely dry street, changes that could mitigate, anything gained during COVID restrictions, reduce length of service on major arterials, move resources to other areas, say no to those not on the workplan, safe bike facilities and vehicle that can clear. Can do more staff training to be more effective and efficient.
 - Suggestion to PAC regarding Shovel A Path program – doorhangers or other reminders to residents of their responsibility.

- Regional Transportation Update (O’Conner, Sanson) [9:23 p.m.]
Continuing to partner with agencies, coalitions, focus on maintaining funding. RTD service levels were reduced for COVID, developing 2021 budget, RTD public comment period is open. Plan to maintain COVID levels into 2021 plus additional reductions, suspended some routes, 40% reduction in service. Overall ridership down 60% similar to Boulder. Substantial layoffs of 500+ are anticipated. Staff working on mitigating as Boulder RTD service reduction appears to be higher than 40% with no routes at Boulder Junction. Ensure essential workers can get to work – Flatirons Flyer is important. Looking at alternatives, safe bike facilities, requesting restoration of bus stop at 47th Street. TAB members may relay community impacts to O’Conner.
- Neighborhood EcoPass (NECO Pass) Program (Hagelin, Crump) [9:35 p.m.]
All RTD residents are eligible to create a neighborhood for NecoPass; Boulder is primary user. Issues – extensive volunteer time, lack of equity. 2020 pilot programs are in association with Boulder Housing Partners. Options include continuing NecoPass, MyRide (pay as you go/reloadable), mobile ticketing (pay as you go, app). RTD is allowing NecoPass groups to suspend in 2021. City financial and programmatic support make the Boulder program unique; a few other cities have programs as well. Neighborhood Transit Access working group will include TAB representative.
 - Question concerning status today, suggestions regarding more equitable support, vary subsidy per group.
 - Staff response - two practical and pragmatic barriers: tracking and administration investment and audit requires papertrail. Negative finding can impact bond rate.

B. Matters from the Board

[10:04 p.m.]

- Updates re: collaboration with other city boards - no Access Management and Parking Strategy (AMPS) update yet.
- Open Board Comment
 - Sustainability/Transportation Connections (Hutchinson) – very difficult for Climate and Sustainability under Jonathan Koehn to incorporate transportation unless it involves electrification, which is mostly about parking. Must define or develop framing metrics.
 - Sustainability Report - comment that transportation is major contributor to greenhouse gas, reduction is not keeping pace with other components. Mainly from vehicle electrification, not transit or alternative modes. Question whether we are making the necessary progress.

Agenda Item 9: Future Agenda Topics

[10:11 p.m.]

- TAB letter to Council – November.

Agenda Item 10: Adjournment

[10:13 p.m.]

There being no further business to come before the board at this time, by motion regularly adopted, the meeting was adjourned at 10:13 p.m.

Motion: Moved to adjourn: Duhaime **Second:** Weinheimer

Motion passes 5:0

Date, Time, and Location of Next Meeting:

The next meeting will be a regular virtual meeting on Monday, November 9, 2020 at 6:00 p.m. unless otherwise decided by staff and the Board.

APPROVED BY:

ATTESTED:

Tila Duhaime per attached
Board Chair

Meredith Schleske
Board Secretary

11/10/2020
Date

11/10/2020
Date

An audio recording of the full meeting for which these minutes are a summary is available on the Transportation Advisory Board web page.

From: [Tila Duhaime](#)
To: [Schleske, Meredith](#)
Subject: Re: For your approval: September TAB minutes
Date: Monday, October 12, 2020 8:46:39 PM

External Sender

Thank you, Meredith. The minutes are approved.

Tila

On Mon, Oct 12, 2020 at 7:03 PM Schleske, Meredith <SchleskeM@bouldercolorado.gov> wrote:

Hi Tila,

The corrected September TAB minutes are attached for your approval. The change from Table Mesa underpass to overpass is item 11, 2nd bullet on the last page.

Thanks for your help!

Meredith

Meredith Schleske

Administrative Specialist

O: 303.441.3204

schleskem@bouldercolorado.gov

Department of Public Works

Business Services Division

1739 Broadway, Boulder 80302



COVER SHEET

MEETING DATE

January 19, 2021

BOARDS AND COMMISSIONS ITEM

November 9, 2020 Transportation Advisory Board Minutes

PRIMARY STAFF CONTACT

Meredith Schleske, TAB Secretary

ATTACHMENTS:

Description

- ▣ **November 2020 Transportation Advisory Board Minutes**

**CITY OF BOULDER
BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING
MINUTES**

Name of Board/ Commission: Transportation Advisory Board	
Date of Meeting: November 9, 2020	
Contact Information Preparing Summary: Meredith Schleske 303.441.3204	
Board Members Present: Tila Duhaime; Mark McIntyre, Alex Weinheimer, Lauren Lambert, Robert Hutchinson	
Staff Present: Erika Vandenbrande, Director for Transportation and Mobility Bill Cowern, Deputy Director for Transportation and Mobility, Acting Principal Transportation Engineer Natalie Stiffler, Deputy Director for Transportation and Mobility Chris Hagelin, Senior Transportation Planner, Acting GO Boulder Manager Danny O'Connor, Senior Transportation Planner Amy Lewin, Senior Transportation Planner Jean Sanson, Senior Transportation Planner Allison Crump, Transportation Planner Noreen Walsh, Public Works Project Manager Edward Stafford, Development Review Manager – Public Works Meredith Schleske, Board Secretary	
Type of Meeting: Advisory/ Regular	
Agenda Item 1: Call to Order	[6:01 p.m.]
Instructions to Virtual Meeting Participants (not an agenda item) – Allison Crump, technical host reviewed rules and technical operations on the virtual platform.	
Agenda Item 2: Approval of October 2020 Minutes	[6:05 p.m.]
Motion: Approval of October 2020 Minutes as presented. Comments concerning the brevity of minutes regarding TAB member comments versus public comment as well as length of memo executive summaries. Motion: McIntyre Second: Duhaime 5:0 Motion Passes.	
Agenda Item 3: Public Comment – there was none	[6:11 p.m.]
Agenda Item 4: COVID-19 Monthly Update	[6:13 p.m.]
Erika Vandenbrande made the update to the board. Boulder County moved back to level three/orange and conditions are worsening. City is assessing service levels. With grant for shared street treatments, we installed barricades October 7 th on 11 th Street from University Avenue to Arapahoe Avenue; 12 th Street from Baseline to Chautauqua auditorium; 19 th Street between Violet and Yarmouth; 34 th Street from Valmont to end of street; Columbine Avenue and Juilliard Street; Martin Drive from Table Mesa Drive to Morehead Avenue. Removed all installations but Martin Drive November 6 th , which will remain until November 23 rd for further study. Public comments included request for more installations, dissatisfaction with level of safety while others felt it enhanced safety. Snow and ice removal will begin to interfere. Downtown street closures extended through end of February.	
TAB Comments <ul style="list-style-type: none"> • Questions regarding data evaluation and if a report will be produced. • Comment that some neighbors moved barricades. • Inquiry about how neighbors were notified, suggestion for neighbors to “adopt” and keep an eye on installations, get buy-in. • Community Vitality (CV) is providing funding to restaurants for food delivery service; TAB member request for more direct communication. There are things that CV is working on that interest TAB. They would have some input and would appreciate the opportunity to weigh in earlier and more frequently on their projects. 	

Agenda Item 5: Community Check-in**[7:17 p.m.]**

NOTE Agenda Item 6 was addressed before Agenda Item 5.

Update regarding milestone dates of North Broadway and 19th Street projects

Gerrit Slatter made the update to the board.

- A. North Broadway – can take advantage of asphalt milling from airport runway, saving maybe \$400,000. Project is scheduled to start January 2021, complete by July 2022.

TAB Comments

- Recommendation to fee Broadway on-street parking from Violet to Lehigh; easier to make the change with project implementation.

- B. 19th Street Multimodal Improvements – getting floodplain development permit, working on design of the Wonderland Creek drainage box underneath 19th Street. COVID staffing reductions have impacted project but on target to complete preliminary design by year-end, complete final design summer 2021, construction start fall 2021, complete spring 2022.

TAB Comments

- Question about on which, if any, design considerations TAB would have opportunity to weigh in.

[7:27 p.m.]**Agenda Item 6: Staff briefing and TAB input/recommendation regarding a modification to the adopted 2021 – 2026 Transportation Capital Improvement Program (CIP) – Table Mesa Multi-Use Path Project [6:24 p.m.]**

A formal public hearing and recommendation for the Transportation Division CIP is scheduled for the TAB meeting on November 9, 2020.

Gerrit Slatter made the report to the board.

Executive Summary

Due to unprecedented circumstances imposed by COVID19 on the budget for the Transportation and Mobility Department, staff is recommending a modification to the recently approved 2021-2026 CIP. The recommended modification is removal of the Table Mesa Multi-Use Path project as currently shown in years 2022 and 2023, redirect the local match portion of this project to the TIP/TMP Implementation line item, and return the grant portion of this funding to the Denver Regional Council of Governments for redistribution in the Boulder County Sub-Region. The reason for this recommendation is that there is insufficient staffing and budget to plan, design, manage and construct the project within the timeframe required by the Colorado Department of Transportation (CDOT). CDOT is the agency that administers and oversees the state/federal transportation grant used for CIP projects. Staff learned on October 27, 2020 that the type of grant funds (State Multi-Modal Option Fund) provided for the Table Mesa MUP project must be spent by July 2023. Given that the approved CIP shows the project not having funding to start until 2022 (a change made due to lack of funding and staffing attributed to COVID19), there is not sufficient time to plan, design and construct the project to align with expenditure of all grant funds by July 2023. Therefore, staff are recommending the project be canceled and removed from the approved 2021-2026 CIP. TAB recommended the six-year 2021-2026 Capital Improvement Program (CIP) at the July 13th TAB meeting and the CIP was approved by City Council as part of the annual budget process on October 20, 2020.

Staff recommends TAB consider the following motion:

TAB recommends that the 2021-2026 Transportation Fund Capital Improvement Program be amended to remove the Table Mesa Multi-Use Path project from the 2022-2023 portion of the CIP.

TAB Clarifying Questions

- Question confirming that recommendation includes transfer of city funds to a different line item for other specific capital projects in the CIP.
- Request for scope of 30th Street project.
- Inquiry regarding cause of \$2 million shortage for 19th Street.
- Questions whether CIP allows for lower cost projects, any limit on dollar amount.
- Comment that there are myriad projects on which to use funds
- Questions and comments regarding 19th Street project requiring about 40 additional drainage inwater inlets, how much local funding increased and why it was not reduced, status if removed from CIP, opinion of Boulder County officials regarding investment in 30th Street as a regional project.

- Questions regarding staff selection of projects, any consideration of whether it is the best use of funds, if Table Mesa project returns to projects wishlist.

Public Participation

[6:52 p.m.]

- Kurt Nordback – supports proposal to return Table Mesa funds to Denver Regional Council of Governments (DRCOG), does not seem like best way to spend \$3.3 million. Urges staff to rethink how to design the multi-use path.
- Lynn Segal – requests her online meeting video be displayed as done in Planning Board and Boulder County. Why is it restricted? Agrees with Slatter regarding Table Mesa – design things more efficiently, Weinheimer captures it well. Not sure CU South project will happen, transportation is going away. Table Mesa project is not so relevant right now. Macy's and Liquor Mart projects impact on funding for transportation, general congestion, housing imbalance. TAB needs to be more connected with Planning Board and have more say in generalized planning, must include metrics on balancing jobs and housing.

TAB Discussion

- General comments regarding more transparent weighting and prioritization of the many projects that must be done, recognition of input regarding peril of high-match projects despite available funds that seem like a great deal but have narrow limitations, opportunity to examine CIP process and focus on projects of highest benefit to community in light of Transportation Master Plan (TMP) goals, cancellation of Table Mesa project is not going backwards. Appreciation of staff commitment and time for conversations. Critically question if project submitted for grant is worthwhile, vet design in advance. If any excess funds occur next year, consider priorities and potential projects such as Pavement Management Program on Folsom.

Motion: TAB recommends that the 2021-2026 Transportation Fund Capital Improvement Program (CIP) be amended to remove the Table Mesa Multi-Use Path project from the 2022-2023 section. If any portion of the local grant match is available upon cancellation of the project, TAB recommends that funding be allocated towards more cost-effective infrastructure that better aligns with Boulder's Vision Zero and Transportation Master Plan goals.

Motion: Weinheimer **Second:** McIntyre

5:0 Motion Passes.

[7:16 p.m.]

Agenda Item 7: Staff briefing and TAB feedback regarding Transportation Master Plan (TMP) Report on Progress

[7:27 p.m.]

Amy Lewin and Allison Crump made the report to the board.

Executive Summary

The purpose of this memo is to provide an update on the development of the Transportation Report on Progress and to get TAB's input on the overall approach and specific accomplishments to highlight. Staff intends to deliver the report to City Council in time for their retreat January 22-23, 2021.

Questions for TAB

- Is the structure understandable?
- Are any key pieces missing?
- What projects/accomplishments since the TMP is TAB particularly proud of that should be highlighted in the Report on Progress?

TAB Input

- Comments that graphics are much better, include as much quantification and as many measurable objectives as possible, keep it concise and general, include one-page benchmark "report card".
- Encouragement to highlight 20 is Plenty – quick success story, should be proud of it. Feature Neighborhood Speed Management Program (NSMP) – demand outpaces our ability to install, staff flexibility to accommodate Martin neighborhood application. Include combining maintenance and improvements.
- Question regarding "essential service" and whether planning and construction should be addressed separately.
- Concerning "be reliable" goal, inquiry if Neighborhood Parking Program (NPP) belongs there and if there is anything to report.
- Suggestion to solicit input from Community Cycles.

- **Matters from Staff/Non-Agenda**

- Update regarding Design and Construction Standards (DCS) transportation (phase 2 scoping) – Gerrit Slatter, Edward Stafford and Noreen Walsh updated the board.

TAB Comments

- Question about how the pedestrian crossing treatment document relates to DCS. Not currently included in DCS because DCS is regulations, not design. Different audience, different intended use. Pedestrian crossings are usually included in CIP. They are not private projects but would be held to same standards. Parking requirements are addressed in land use and zoning.
- Regional Transportation Update
Jean Sanson updated the board.
 - RTD – new CEO and General Manager Debra Johnson is from the west coast and has a lot of experience. She is the first female in this position. Continued fallout from COVID caused additional temporary service reductions including route 205 Gunbarrel to I-25, service to Lafayette, suspending service to Golden. Continuing to pursue restoration to Boulder Junction. RTD board made important amendment with promise to review by September 2021.
 - DRCOG updates their metropolitan division 2050 regional transportation plan every ten years, including long-range investment priorities. Important projects including multimodal and bus rapid transit (BRT) for SH 119 out to I-25, SH 7, and South Boulder Road are now proposed to be included. In addition, they are linchpins to intersection improvements and transit safety enhancements at intersections along SH 93 into Broadway.
 - Two SH 119 projects in 2021: Boulder County-sponsored SH 119 bikeway design currently in consultant selection phase and CDOT final design for BRT managed lane between Longmont and Boulder.
 - Staff is designing north 28th Street business access transit lane.
 - HOP update - ridership down 78% in October year over year, up a bit with CU in session, double of summer statistics when CU was not in session. Expect to continue until semester ends. CDOT issued COVID protocols with ridership limits and social distancing. Some HOP trips added for CU semester will drop off but be restored with January semester.
 - Question regarding EcoPass/fare free zone. Have or can we eliminate fares on HOP? Did so concurrently with RTD April 19 through July 1, could be a consideration going forward in consultation with RTD and CU to bring riders back. Each of those organizations fund part of HOP operations.

- **Matters from the Board**

[8:20 p.m.]

- Update regarding City Council study sessions
Robert Hutchinson updated the board. Theme regarding e-bikes and how they are changing other cities. City Council (CC) members invested a lot of time to understand, including request for proposal (RFP) process. Bidders may determine their own model. Comments concerned equity, accessibility, e-scooters, placement, clarity of metrics in RFP. Discussion regarding where micromobility vehicles are allowed, safety, some interest and comfort with smaller and simpler zones, maybe not following existing general improvement district (GID) zones.
 - Comment about safety of micromobility and some misunderstanding of data; encouragement to TAB members to contact CC to clarify true current state. Suggestion to Hutchinson to draft a letter to CC, run by other tab members.
- Updates re: collaboration with other city boards – Weinheimer reported to the board. Access Allies is name of Access Management and Parking Strategy (AMPS) Working Group, kicked off recently. Following review of existing parking conditions, CV expects to begin work on implementation and action plan mid-2021. It does not seem to be a joint effort with transportation, CV seems to view parking reform as neighborhood parking and pricing not including structured parking downtown. Perception is that it is a consultant-driven process. Team members were more open minded to other initiatives. Parking code changes are on hold until next year with intent to modify as soon as planning department is able to do so. North Broadway and Alpine-Balsam areas are potential new districts; requires coordination with CV who oversees districts. Encouragement to speak up to amplify scope of the working group.
- TAB Letter to City Council – address three questions.
 - *What has made your board or commission happy in the past year?*

New director, new deputy director, arterial focus, work done on CIP to balance roadway improvement with more cost-effective initiatives, great 2019 TMP, 20 is Plenty, shared streets, COVID opportunity to reach and take a chance, popularity of NSMP, quick changes, ability to learn, not only cement and street design, micromobility progress, experimenting in less dense area of city, still functioning and accomplishing.

- *What has made your board or commission sad in the past year?*

Need to be more intentional and flexible about funding and spending, inability to define a better, sustainable transportation funding system, layoffs and furloughs, never met most TAB members in person!

- *What is your board looking forward to in 2021?*

Create a new strategy to maintain vehicular capacity but design the street to be uncomfortable to speed, recreate space within the public right of way for people to feel safe and comfortable walking and biking, leverage the process and progress we have made, continue to support the good work that is unfolding.

- Appoint two TAB members to author letter to CC, circulate to all before December TAB meeting, comment only to sender – Weinheimer, Lambert.
- TAB Presentation to City Council January 12, 2021 6 p.m. Presenter to be appointed at December TAB meeting.
- 2021-2022 TAB Application Questions
 1. *What qualifications, skill sets and relevant experiences do you have for this position (such as education, training, service on governing or decision-making boards, etc.) that would contribute to you being an effective board member and community representative?*
 2. *Have you had any experience(s) with this Board or the services it oversees?*
 3. *Describe a situation where you were involved with a group and had to work through a disagreement or conflict among the members.*
 4. *List all potential conflicts of interest you might have with respect to the work of this board.*
 5. *How can we best implement the Transportation Master Plan and how do we address the major challenges to doing so?*
 6. *What is your assessment of important transportation issues related to Boulder's community sustainability goals (Economic, Environmental and Social)? How might the City work with the business community, neighborhoods, and interest groups to address these issues?*
 7. *In your opinion, what are the most pressing transportation issues for the City of Boulder? What new approaches could Boulder take towards addressing these issues?*
 8. *What personal experience do you have that can lend diversity of thought to the board?*
- Open Board Comment
 - Kudos to Callie Hayden for outstanding response to recent big snowstorm; used *Inquire Boulder* a lot, mostly concerning large businesses and mobile home parks. Everyone responded to quickly.

Agenda Item 9: Future Agenda Topics

[9:00 p.m.]

•

Agenda Item 10: Adjournment

[9:01 p.m.]

There being no further business to come before the board at this time, by motion regularly adopted, the meeting was adjourned at 9:01 p.m.

Motion: Moved to adjourn: Hutchinson **Second:** Duhaime

Motion passes 5:0

Date, Time, and Location of Next Meeting:

The next meeting will be a regular virtual meeting on Monday, December 14, 2020 at 6:00 p.m. unless otherwise decided by staff and the Board.

APPROVED BY:

Tila Duhaime per attached email
Board Chair

12/15/2020
Date

ATTESTED:

Meredith Schleske
Board Secretary

12/15/2020
Date

An audio recording of the full meeting for which these minutes are a summary is available on the Transportation Advisory Board web page.

From: [Tila Duhaime](#)
To: [Schleske, Meredith](#)
Subject: Nov 2020 TAB minutes
Date: Tuesday, December 15, 2020 8:15:51 PM

External Sender

Hi Meredith, I just now listened to your email from earlier today. I gave myself and family a "mental health day" so we were offline all day.

This is still the correct email for me for TAB official business. But since there were no changes to the minutes, I hereby approve the draft that was circulated to TAB and made of record prior to the meeting last night.

Thank you for your tireless assistance.

Tila Duhaime



COVER SHEET

MEETING DATE

January 19, 2021

DECLARATIONS ITEM

Cervical Cancer Awareness Month Declaration

PRIMARY STAFF CONTACT

Taylor Reimann

ATTACHMENTS:

Description

- ▣ **Cervical Cancer Awareness Declaration**

Cervical Cancer Awareness Month

January 5, 2021

According to the US Cancer Statistics Working group, in 2020, 13,800 new cervical cancer cases were diagnosed, and 4290 lives were lost from it.

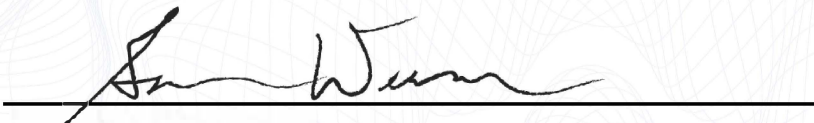
The National Institutes of Health report that the five-year survival rate of women diagnosed with Cervical cancer is close to 75 percent, due to improved treatment, early diagnosis, and vaccinations.

Cervical cancer incidence rates and death rates are still a high amount in certain populations in the United States, according to National Institutes of Health, largely due to limited access to cervical cancer screening and vaccinations.

The results from a simple Pap test and human papillomavirus (HPV) co-test can be used to help prevent cervical cancer or detect cervical cancer in its earlier and most curable stages.

We, the City Council of the City of Boulder, Colorado, declare January 2021 as

CERVICAL CANCER AWARENESS MONTH



Sam Weaver, Mayor

